نُوْرُ الْأَنْوَارِ فِيْ شَرْحِ الْمَنَارِ

The Light of Lights on the Commentary of Al-Manaar

Volume I

Author: Imaam Ahmad Mulla Jeewan al-Hanafi رحمة الله عليه

Translator: Mufti Muhammad Huzaifah ibn Adam aal-Ebrahim

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Nidaa-ul-Haqq Publications

Noor-ul-Anwaar
fee
Sharh-il-Manaar

(The Light of Lights
on the
Commentary of Al-Manaar)

Volume I

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القسم الأول من التقسيم الأول

Part One, from Section One:

الخاص

Al-Khaas (Specific)

تعريفه

1. The Definition of *Khaas* (the Specific):

أما الخاص: فكل لفظ وضع لمعنى معلوم على الإنفراد

"*Khaas* refers to any such word which has one, specific, known meaning."

فقوله: <لكل لفظ> بمنزلة الجنس (شامل) <لكل ألفاظ>, والباقي كالفصل

"The statement of the author: "Every word", is in the position of *jins* (species, or specifying a species), and encompasses the meaning of "all (such) words." The rest are separate.

فقوله: <وضع لمعنى> يخرج المهمل

By him saying: "used for a specific meaning," meaningless (words or speech) is excluded.

وقوله: <معلوم> إن كان معناه: <معلوم المراد> يخرج منه المشترك لأنه غير معلوم المراد

With regards to his saying: "known", if what he means by it is "its intended meaning is known", then all words possessing more than one possible meaning is excluded, because when it comes to such words (having multiple meanings), the intended meaning is not (always) known.

وإن كان معناه <معلوم البيان> لم يخرج المشترك منه ويخرج من قوله <على الإنفراد> لإن معناه حينئذ: أن يكون المعنى منفرداً عن الأفراد وعن معنى آخر, فيخرج عنه المشترك والعام جميعاً

If what he means by it is that the explanation is known, then this would not exclude words possessing multiple meanings; however, words possessing multiple means would still be excluded on account of what he says next, which is **على الإنفراد**, i.e. having just one meaning, because what he means by that is, for a word to be *khaas* it must be alone in its meaning. It must possess just one meaning and be free from any other meaning. Thus, with that, general (non-specific) words and words possessing multiple meanings are all excluded.

وإنما ذكر اللفظ هاهنا دون النظم جرياً على الأصل, ولأن الظاهر أن هذه الأقسام ليست مختصة بالكتاب بل يجري في جميع كلمات العرب. وإنما ذكر النظم في التقسيمات رعاية للأدب, لأن النظم في الأصل جمع اللؤلؤ في السلك, بخلاف اللفظ فإنه في اللغة الرمي

He used the word *lafzh* instead of *nazhm*, proceeding thereby according to the default, and because the apparent is that these parts are not exclusive to the book but rather, they appear in all the words of the Arabs. He only mentioned *nazhm* in the divisions out of consideration for *al-Adab* (the science of Arabic literature), because the word *nazhm* actually means to tread pearls on a string, opposite to the word *lafhz*, which, linguistically, means to throw.

وأما ذكر كلمة <كل> فإنه وإن كان مستنكراً في التعريفات في اصتلاح المنطق, ولكن القصد هاهنا بيان الأطراد والضبط وهو إنما يحصل بلفظ <كل>

He used the word *kull* (every), which, though it is disliked in definitions in the terminology of the people of *mantiq* (the logicians), but here, the purpose of its usage to give exactness, i.e., to apply the principle in entirety, with all of its parts, without exiting from it, and this is only achieved by using the word *kullu*.

صور الخاص

2. The Forms of *Khaas*

<وهو إما أن يكون خصوص الجنس أو خصوص النوع أو خصوص العين> تقسيم للخاص بعد بيان تعريفه

أي الخصوص الذي يفهم في ضمن الخاص إما أن يكون خصوص الجنس, بأن يكون جنسه خاصاً بحسب المعنى وإن يكن ما صدق عليه متعدداً, أو خصوص النوع على هذه الوتيرة, أو خصوص العين – أي الشخص المعين – وهذا أخص الخاص

The author says: "*Khaas* is either: specifying a species, or specifying a type, or specifying an individual."

This is a segment on *khaas* after explaining its definition.

What this means is that, the specification which is understood from *khaas* is either specification of a species, which is by, for example, its species being specific or exclusive in terms of meaning even if it can apply to more than that; or, specification of a class - again, same as the above; or specification of a specific individual, and this is the more specific or exclusive kind of *khaas*.

The word *jins*, according to them (i.e. according to the `Ulamaa of Usool, contrary to the Logicians) is a comprehensive term used for many that are different in terms of objectives/purposes/designs/aims, not realities, as is the view of the Logicians.

The word *nauw`*, according to them (again, according to the *Usooliyyeen*, or `Ulamaa of Usool) is a comprehensive term used for many that are the same in terms of objectives/purposes/designs/aims not realities, as is the view of the Logicians.

فهم إنما يبحثون عن الأغراض دون الحقائق فرُبَّ نوع عند المنطقيين جنس عند الفقهاء كما يظهر عن الأمثلة التي ذكرها بقوله: <كإنسان, ورجل, وزيد>

Because they (i.e. the *Usooliyyoon*) search for the objectives/purposes rather than the realities, so many a times, something that is considered a *nauw`* by the Logicians in considered a *jins* by the Fuqahaa, as is apparent in the examples mentioned by him, which are: *insaan* (a human being, as an example of *jins*), a man (as an example of *nauw`*), and Zaid (as an example of an individual).

ف<الإنسان> نظير خاص الجنس فإنه مقول على كثيرين مختلفين بالأغراض فإن تحته رجلاً وامرأة, والغرض من خلقة الرجل هو كونه نبياً وإماماً وشاهداً في الحدود والقصاص ومقيماً للجمعة والأعياد ونحوه, والغرض من المرأة كونها مستفرشة آتية بالولد مدبرة لحوائج البيت وغير ذلك. و<الرجل> نظير خاص النوع فإنه مقول على كثيرين متفقين بالأغراض فإن أفراد الرجال كلهم سواء في الغرض. و<زيد> نظير خاص العين فإنه شخص معين لا يحتمل الشركة إلا بتعدد الأوضاع

So, "*insaan*" (human being) is an example of specification of a species, because it is a (comprehensive) term used for that which is many but differing in design/purpose/objectives, because under this (species) you get man and you get woman, and the aim and object of the physical constitution of a man is that he can be a Nabi, or an Imaam, or a witness when it comes to *hudood* (punishments stipulated by the Sharee`ah), or *qisaas* (retribution), and he can establish Jumu`ah, and the Eids, etc. On the other hand, the aim and object of the physical constitution of the woman is that she is able to be child-bearing, supervising the needs and affairs of the household, etc.

"Man" is an example of specification of a type, because it is a (comprehensive) term used for that which is many and the same in terms of the aim and object, or purpose, because though there may be many men, all of them are the same in terms of the purpose/design/aim and object.

"Zaid" is an example of a specification of an individual (or class), because he is an individual person, and there is no possibility of association or partnership, except if there is more than one (i.e. person called Zaid).

حكم الخاص

3. The Ruling of *Khaas*

ولما فرغ المصنف عن تعريف الخاص وتقسيمه شرع في بيان حكمه فقال: <وحكمه: أن يتناول المخصوص قطعاً>

أي أثره المرتب عليه أن يتناول المخصوص الذي هو مدلوله قطعاً بحيث يقطع إحتمال الغير

After the author finished defining *khaas* and dividing it up, he now begins explaining what is its ruling, so he says:

"Its ruling is that it deals specifically with that which is has been specified."

In other words, its effect is that it deals with or discusses only that which has been specified, only the very thing (i.e. species, or type, or individual) that has been specified, in such a manner that the possibility of anything else or anyone else being referred to is absolutely removed (i.e. when a person says "man", this is specifying a class, and the ruling and effect of this is that, it is now understood that only "man" is being referred to, and anything else, whether it be women, or plants, or animals, or anything else, is completely excluded, and the discussion, subject matter and attention is drawn solely to this *nauw`* (type) which has been specified, which is "man".)

فإذا قلنا: <زيد عالم> فزيد خاص لا يحتمل غيره إحتمالاً ناشئاً عن دليل وعالم أيضاً خاص لم يحتمل غيره كذلك, فكل واحد من الكلمتين يتناول مدلوله قطعاً فثبتت من مجموع الكلام قطعية الحكم بعالم على <زيد> بهذه الواسطة

So when we say, "Zaid is an `Aalim." Zaid is specific; there is no possibility of anyone other than Zaid being meant, for such a possibility would not arise from any evidence. The term `Aalim, also, is *khaas* (specific); nothing other than any `Aalim is meant (also, no one other than an `Aalim is meant.) Each of two words deals with their respective purport is a way that is absolute, having no room for the possibility of "other", and thus from the speech itself it is established that the label of "`Aalim" can be applied to Zaid, in an absolute way, by this means.

<ولا يحتمل بياناً لكونه بيناً>

هذا حكم آخر مقو للحكم الأول وكأنهما متحدان, ولكن الأول لبيان المذهب والثاني لنفي قول الخصم ولتمهيد التفريعات الآتية.

أي لا يحتمل الخاص بيان التفسير لكونه بيناً بنفسه, فهو مقابل للمجمل حيث يحتاج إلى بيان المجمل وتفسيره

The author says: "(*Khaas*) has no possibility (or need) of explanation or clarification, because in and of itself it is already clear."

This is another ruling which strengthens the first ruling, and it would appear as though both are the same; however, the first is to explain the teaching (or where it is coming from), and the second is to dispel the word of any opponent, and also, to prepare the way for the forthcoming issues branching off (from this).

What he (the author) means is that *khaas* does not need *tafseer* (explanation or clarification) because it is already clear. This is the opposite of *mujmal* (concise), because that which is *mujmal* stands in need of clarification and elucidation.

وأما بيان التقرير والتغيير فيحتمله الخاص لأنه لا ينافي القطعية, فإن بيان التقرير يزيل الإحتمال الناشئ بلا دليل فيكون محكماً كما يقال: <جاءني زيد زيد>

وبيان التغيير يحتمله كل كلام قطعياً كان أو ظنياً كما يقال: <أنتِ طالق إن دخلتِ الدار> وهكذا بيان التبديل يحتمله الخاص أيضاً

(فلا يجوز إلحاق التعديل بأمر الركوع والسجود على سبيل الفرض)

شروع في تفريعات مختلف فيه بيننا وبين الشافعي على ما ذكر من حكم الخاص

As for the clarifications of *taqreer* (determining) and *taghyeer* (altering), then *khaas* has a possibility for this because it does not negate its "absolute" status, because the clarification given by *taqreer* (determining; fixing) removes

any possibility that may arise without evidence, and so it becomes *muhkam* (clear), as it is said: "Zaid came to me - Zaid."

As for the clarification given by *taghyeer* (altering), then all speech carries a possibility for it, whether it is absolute or assumed, as it is said: "You are divorced if you enter the house." Similarly, *khaas* bears the possibility for the clarification of *tabdeel* (substituting).

The author says: "For this reason, it is not permissible to attach *ta`deel* (i.e. *ta`deel al-arkaan*, which is to carry out the postures of Salaah with calmness and composure, with balance, not rushing) to the commands of *rukoo`* and *sujood*, by saying it (*ta`deel*) is *fardh* (compulsory)."
Here, the author begins to discuss those issues which branch off (from what was explained earlier), in which there are differences of opinion between us and (Imaam) ash-Shaafi`ee رحمة الله عليه, with regards to the ruling of *khaas*.

يعني إذا كان الخاص لا يحتمل البيان لكونه بيناً بنفسه لا يجوز إلحاق تعديل الأركان – وهو الطمأنينة في الركوع والسجود والقومة بعد الركوع والجلسة بين السجدتين – بأمر الركوع والسجود وهو قوله تعالى:

وَارْكَعُوْا وَاسْجُدُوْا

على سبيل الفرض كما ألحقه به أبو يوسف والشافعي

Meaning, since *khaas* cannot get an explanation attached it to it because it is already clear in and of itself, then based on this, it is not permissible to attach *ta`deel-ul-arkaan* - which refers to having calmness and composure during *rukoo`*, *sujood*, *qowmah* (standing after *rukoo`*), and sitting between the two *sajdahs* - to the order of performing *rukoo`* and *sajdah*, because Allaah Ta`aalaa says:

{"*And perform rukoo` and sujood...*"}

*Ta`deel-ul-Arkaan* can therefore not be attached to this command as being a *fardh*, as was claimed by Imaam ash-Shaafi`ee and Imaam Abu Yusuf رحمة الله عليهما.

وبيانه: أن الشافعي – رحمه الله – يقول: تعديل الأركان في الركوع والسجود فرض لحديث أعرابي خفف في الصلاة فقال له عليه الصلاة والسلام:

قُمْ فَصَلِّ فَإِنَّكَ لَمْ تُصَلِّ

هكذا قاله ثلاثاً

Imaam ash-Shaafi`ee رحمة الله عليه said that *ta`deel-ul-arkaan* in *rukoo`* and *sujood* is *fardh* on the basis of the Hadeeth of the A`raabi (Sahaabi from the desert) who shortened his Salaah (i.e. his *rukoo`* and *sujood*), so Rasoolullaah **صلى الله عليه وسلم** said to him: "Stand up and perform Salaah for you have not performed Salaah."

He said this thrice.

ونحن نقول: إن قوله تعالى:

وَارْكَعُوْا وَاسْجُدُوْا

خاص وضع لمعنى معلوم, لأن الركوع: هو الإنحناء عن القيام, والسجود: هو وضع الجبهة على الأرض

والخاص لا يحتمل البيان حتى يقال: إن الحديث لحق بياناً للنص المطلق

We respond to this by saying: with regards to the Aayah:

{"*And perform rukoo` and sujood...*"}

It is *khaas*, used to refer to a singular, known meaning, because *rukoo`* is to bend down from a standing position, and *sujood* is to place the forehead on the ground.

Something that is *khaas* cannot get an explanation attached to it, so (it cannot be) aid that: The Hadeeth has attached an explanation to unrestricted *nass* (explicit text of Qur'aan).

فلا يكون إلا نسخاً وهو لا يجوز بخبر الواحد, فينبغي أن تراعى منزلة كل من الكتاب والسنة, فما ثبت بالكتاب يكون فرضاً لأنه قطعي, وما ثبت بالسنة يكون واجباً لأنه ظني

It would have to then be a *naskh* (abrogation, i.e. of the Aayah), and that is not permissible on account of this Hadeeth being a *khabr-e-waahid* (singular narration). It is necessary to take into consideration the positions of both the Qur'aan and the Sunnah. Something that is established through the Qur'aan is *fardh*, because it is absolute, and something established from the Sunnah is *waajib*, because it (i.e. the authenticity of the particular narration) is speculative (i.e. differed upon among the Muhadditheen).

<وبطل شرط الولاء والترتيب والتسمية والنية في آية الوضوء>

هذا تفريع ثان عليه وعطف على قوله: <فلا يجوز>

يعني إذا كان الخاص لا يحتمل البيان فبطل شرط الولاء كما شرطه مالك وشرط الترتيب والنية كما شرطهما الشافعي, وشرط التسمية كما شرطه أصحاب الظواهر في آية الوضوء, وهو قوله تعالى:

فَاغْسِلُوْا وُجُوْهَكُمْ

الآية

The author says: "It is false to stipulate consecutiveness (*al-walaa*), order (*at-tarteeb*), reciting the *tasmiyah* (saying *Bismillaahir Rahmaanir Raheem*), or saying the *niyyah* (intention), for (the command mentioned in) the Aayah of Wudhoo."

The author here again branches off into a second issue, which is a continuation of what he mentioned from his statement, "And it is not permissible."

What he means is that, since *khaas* cannot get an explanation attached to it (because it is already clear in and of itself), then it is invalid to make consecutiveness a condition (for Wudhoo), as was done by Imaam Maalik, or to make order (making Wudhoo in order) and saying the *niyyah* (intention) a condition, as was done by Imaam ash-Shaafi`ee, or to make

recitation of the *tasmiyah* a condition, as was done by the Zhaahiris (followers of Imaam Daawud azh-Zhaahiri and Imaam ibn Hazm azh-Zhaahiri, founders of the Zhaahiri Madh-hab). To attach any such stipulations to the Aayat of Wudhoo is invalid. The Aayat of Wudhoo is:

{"*Wash your faces...*"}

وبيان ذلك: أن مالكاً يقول: إن الولاء فرض في الوضوء, وهو أن يغسل أعضاءه في الوضوء متتابعاً متوالياً بحيث لم يجف العضو الأول لمواظبة النبي صلى الله عليه وسلم

The explanation of this is that, Imaam Maalik رحمة الله عليه had said that *al-Walaa* (consecutiveness) is *fardh* in Wudhoo, and *al-Walaa* is that a person washes his limbs consecutively, in such a manner that he washes the next limb before the previous one has dried, (and he based his view of it being *fardh*) because Nabi **صلى الله عليه وسلم** always used to (perform Wudhoo in this manner).

وأصحاب الظواهر يقولون: إن التسمية فرض في الوضوء لقوله صلى الله عليه وسلم:

لاَ وُضُوْءَ لِمَنْ لَمْ يُسَمِّ

The Zhaahiris say that recitation of the *tasmiyah* is *fardh* in Wudhoo, because Nabi **صلى الله عليه وسلم** said:

"There is no Wudhoo for the one who did not (recite the) *tasmiyah*."

والشافعي يقول: إن الترتيب والنية في الوضوء فرض لقوله صلى الله عليه وسلم:

لَا يَقْبَلُ اللهُ صَلَاةَ امْرِءٍ حَتَّى يَضَعَ الطُّهُوْرَ فِيْ مَوَاضِعِهِ فَيَغْسِلَ وَجْهَهُ ثُمَّ يَدَيْهِ

الحديث

ولقوله صلى الله عليه وسلم:
إِنَّمَا الْأَعْمَالُ بِالنِيَّاتِ

والوضوء أيضاً عمل فلا يصح بدون النية

Imaam ash-Shaafi`ee says that *tarteeb* (performing Wudhoo in order) and reciting the *niyyah* (intention) is *fardh* in Wudhoo, because Nabi صلى الله عليه وسلم said:

"Allaah does not accept the Salaah of a man until he places the purification in its (proper) places, so he washes his face, then his arms..."

And the Hadeeth:

"Actions are according to (their) intentions."

Wudhoo is also an action, and therefore it is invalid without a *niyyah* (intention).

ونحن نقول: إن الله تعالى أمرنا في الوضوء بالغسل والمسح وهما خاصان وضعا لمعنى معلوم وهو الإسالة والإصابة, فاشتراط هذه الأشياء كما شرطها المخالفون لا يكون بياناً للخاص لكونه بيناً بنفسه, فلا يكون إلا نسخاً وهو لا يصح بأخبار الآحاد

We (the Ahnaaf) say: Allaah Ta`aalaa ordered us, in Wudhoo, to perform *ghasl* (washing) and *masah* (wiping), and both of these words are *khaas*, placed (used) for a singular, known meaning, and that is, (in the case of *ghasl*): *isaalah* (letting water flow over the limb), (and in the case of *masah*): *isaabah* (wiping). Therefore, attaching other conditions as is done by those who disagree cannot act as an explanation (attached) to something that is *khaas*, because (*khaas*) is already clear in and of itself. Therefore, it would have to be a *naskh* (abrogation), but that is not the case because *naskh* (abrogation of an Aayah with a Hadeeth) cannot take place with narrations that are *akhbaar aahaad* (singular narrations).

وغايته أن تراعى منزلة كل واحد من الكتاب والسنة, فما ثبت بالكتاب يكون فرضاً وما ثبت بالسنة ينبغي أن يكون واجباً كما في الصلاة, لكن لا واجب في الوضوء بالإجماع, لأن الواجب كالفرض في حق العمل وهو لا يليق إلا بالعبادات المقصودة, فنزلنا عن الوجوب إلى السنية وقلنا بسنية هذه الأشياء في الوضوء

The objective is that the status of both the Kitaab (i.e. the Qur'aan) and the Sunnah be taken into consideration: whatever is established from the Kitaab

(the Qur'aan) is *fardh* and whatever is established (proven) from the Sunnah is *waajib*, as (is the case) in Salaah. However, there is no *waajib* act in Wudhoo according to *ijmaa`* (consensus), and the reason for this is that *waajib* is the same as *fardh* with regards to acting upon it (i.e. you have to carry out a *waajib* in the same way as you have to carry out a *fardh*, and a person is sinful for not doing it), and this is only the case with those `Ibaadaat (acts of worship) which are a goal in and of themselves (like Salaah, Sawm, etc., unlike Wudhoo, which is not an `Ibaadah in and of itself, but rather, it's a means to the actual `Ibaadah, which is Salaah). Thus, we take the ruling down (in Wudhoo) from *wujoob* to Sunnah, so we say that all of these actions are Sunnah in Wudhoo (rather than *waajib*).

(والطهارة في آية الطواف)

عطف على قوله: <الولاء> وتفريع ثالث عليه, أي إذا كان الخاص بيناً بنفسه لا يحتمل البيان فبطل شرط الطهارة في آية الطواف وهي قوله تعالى:

وَلْيَطَّوَّفُوْا بِالْبَيْتِ الْعَتِيْقِ

فإن الشافعي يقول: إن طواف البيت لا يجوز بدون الطهارة لقوله صلى الله عليه وسلم:

الطواف بالبيت صلاة

وقوله صلى الله عليه وسلم:

أَلَا لَا يَطُوْفَنَّ بِالْبَيْتِ مُحْدِثٌ وَلَا عُرْيَانٌ

The author says: "The (same applies to stipulating) *tahaarah* (i.e. being in a state of Wudhoo) in the Aayat of Tawaaf."

The author is continuing from his previous statement on *al-Walaa*, and this is a third issue he has branched off into. What it means is that, because *khaas* is clear in and of itself and does not have the possibility of an explanation being attached to it, it is thus invalid to stipulate *tahaarah* (being in a state of Wudhoo, as being *fardh*) in the Aayat of Tawaaf, which is:

{"*And let them perform Tawaaf of al-Bayt al-`Ateeq (the Ancient House).*"}

Imaam ash-Shaafi`ee said: "Tawaaf of the Bayt (i.e. the Ka`bah) is not permissible without purity (i.e. Wudhoo), because Rasoolullaah صلى الله عليه وسلم said:

"Tawaaf of the Bayt (Ka`bah) is Salaah."

And Rasoolullaah **صلى الله عليه وسلم** said:

"A person in a state of *hadath* (impurity, not being in a state of *wudhoo*) must not perform Tawaaf, and neither must one who is naked."

ونحن نقول: إن الطواف لفظ خاص معناه معلوم وهو الدوران حول الكعبة, فاشتراط الطهارة فيه لا يكون بياناً له لكونه بيناً بنفسه, بل يكون نسخاً وهو لا يجوز بخبر الواحد

غايتها أن تكون واجبة ينقص بتركها الطواف فيجبر بالدم في طواف الزيارة وبالصدقة في غيره وأما زيادة كونه سبعة أشواط وابتداؤه من الحجر الأسود فلعله ثبت بالخبر المشهور وهي جائزة بالإتفاق

We (the Ahnaaf) say: Tawaf is a word with a meaning which is well-known, and that is: circumambulating the Ka`bah. Thus, stipulating *tahaarah* (being in a state of *wudhoo*) in it (as being *fardh*) cannot act as an explanation attached to it (*khaas*), because it (*khaas*) is already clear in and of itself. Thus, it would have to act as a *naskh* (abrogation), but that cannot take place in the case of a *khabr-e-waahid* (solitary narration).

At most, it is *waajib*, and omitting it causes a reduction (in the reward) of the Tawaaf which is compensated for by a sacrifice if it be *Tawaaf-e-Ziyaarat*, or *sadaqah* if it be a different Tawaaf.

As for the increase of it being seven *shawts* (rounds), and beginning from the Hajr-e-Aswad, then perhaps that is established from the well-known narration, and that is permissible by consensus.

(والتأويل بالأطهار في آية التربص)

عطف على قوله: <شرط الولاء> وتفريع رابع عليه, أي إذا كان الخاص بيناً بنفسه لا يحتمل البيان فبطل تأويل القروء بالأطهار في قوله تعالى:

وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوْءٍ

وبيانه أن قوله تعالى: قروء, مشترك بين معني الطهر والحيض فأوله الشافعي رحمه الله تعالى بالأطهار بدلالة قوله تعالى:

فَطَلِّقُوْهُنَّ لِعِدَّتِهِنَّ

على أن اللام للوقت, أي فطلقوهن لوقت عدتهن وهو الطهر, لأن الطلاق لم يشرع إلا في الطهر بالإجماع

The author says: "And interpreting the Aayat of *Tarabbus* to be referring to (three periods) of purity."

This is a continuation from his statement regarding *al-Walaa*, and a fourth issue he has branched into (pertaining to that topic). What it means is that, because *khaas* is clear in and of itself and has no possibility of explanation or clarification, it is then invalid to interpret the word "*Quroo*" in the Aayah as being periods of purity (i.e. after *haidh*), as in the Aayah:

{"*And those women who have been divorced should wait for three quroo'...*"}

The reason he says this is because the word *quroo'* contains the meanings of both *tuhr* (purity) and *haidh*, so Imaam ash-Shaafi`ee interpreted it to be referring to purity (i.e. the woman should wait until three periods of purity have passed, as her *`iddat*). He did so because of the Aayah which says:

{"*So divorce them at their `iddat (prescribed periods)...*"}

He said that the *laam* used in the Aayah is a reference to *waqt* (time), i.e. divorce them at the time of their *`iddat*, which is *tuhr* (purity, i.e. when they are not in *haidh*), because divorce is not stipulated to be given except during *tuhr* (purity), by *ijmaa`* (consensus).

وأوله أبو حنيفة رحمه الله بالحيض بدلالة قوله تعالى: ثلاثة, لأنه خاص لا يحتمل الزيادة والنقصان, والطلاق لم يشرع إلا في الطهر فإذا طلقها في الطهر وكانت العدة أيضاً هي الطهر فلا يخلوا إما أن يحتسب ذلك الطهر من العدة أولاً, فإن احتسب منها كما هو مذهب الشافعي

تكون قرئين وبعضاً من الثالث, لأن بعضاً منه قد مضى, وإن لم يحتسب منها ويؤخذ ثلاث أخر ما سوى هذا القرء يكون ثلاثاً وبعضاً, وعلى كل تقدير يبطل موجب الخاص الذي هو ثلاثة

Imaam Abu Haneefah رحمة الله عليه, on the other hand, interpreted it (*quroo'*) as referring to *haidh*, because of the word used in the Aayah: *thalaathah* (three), because that word (three) is *khaas*, and thus has no possibility of increasing or decreasing (it can never be more than three or less than three, it has to be *exactly* three, because it's *khaas*), and, *talaaq* (divorce) is meant to be given only during *tuhr* (a period of purity, free from *haidh*). So, if he gives her a divorce during *tuhr*, and the *`iddat* is also *tuhr* (like Imaam ash-Shaafi`ee says), then either he has to count that *tuhr* (in which she is divorced) as being from the *`iddat*, or not. If he counts it as being from the *`iddat*, as is the Madh-hab of Imaam ash-Shaafi`ee, then (rather than being three full periods, as the Aayah mentions) it would be two *quroo's* and a bit of the third (which is the one in which he had divorce her), because a bit of it had already passed. On the other hand, if he does not count that *tuhr* as being part of (the three periods), but says it has to be another three (three besides that one), then this would be three *quroo's* plus a bit of a fourth. In both cases, it would be going against *khaas*, which is three (cannot be more than three or less than three, otherwise it's not *khaas*).

وأما إذا كانت العدة هي الحيض والطلاق في الطهر لم يلزم شيء من المحذورين, بل تعد ثلاث حيض بعد مضي الطهر الذي وقع فيه الطلاق

وقد قيل: إن هذا الإلزام على الشافعي يمكن أن يستنبط من لفظ قروء بدون ملاحظة قوله: ثلاث, لأنه جمع وأقله ثلاث, وهذا فاسد, لأن الجمع يجوز أن يذكر ويراد به ما دون الثلاث كما في قوله تعالى:

اَلْحَجُّ أَشْهُرٌ مَّعْلُوْمَاتٌ

بخلاف أسماء العدد فإنها نص في مدلولاتها

However, if *`iddat* is taken to be *haidh* and *talaaq* (divorce) is issued during *tuhr* (purity), then neither of these two (above-mentioned scenarios) would happen; rather, you would have three full periods of *haidh* after the passing of the period of *tuhr* in which the divorce had been issued.

It has also been said: this imposition upon Imaam ash-Shaafi`ee can be drawn out from the word *quroo`* without considering his statement of "three", because it is plural and the minimum for plural is three. This is erroneous, because it is possible for plural to be mentioned and yet what is intended is less than three, as is the case in the Aayah:

{"*Hajj is in the months well-known.*"}

This is contrary to the numerical nouns, for they are clear in their purport.

وأما قوله تعالى:
فَطَلِّقُوْهُنَّ لِعِدَّتِهِنَّ

فمعناه لأجل عدتهن – أي طلقوهن بحيث يمكن إحصاء عدتهن وذلك بأن يكون في طهر لا وطئ فيه, لأنه يعلم حينئذ أنها غير حامل فتعتد بثلاث حيض بلا شبهة

As for the Aayah:

{"*So divorce them at their `iddat (prescribed periods)...*"}

What it means is: for the sake of their *`iddat*, i.e. in such a way that it is possible to count their *`iddat*, and that is by issuing *talaaq* (divorce) during a period of *tuhr* (purity) in which no intimacy had taken place, because he will know, thereby, that she is not pregnant, and thus three periods of *haidh* can be counted without any doubt.

ولا تطلقوا في طهر وطئ فيه لأنه لم يعلم حينئذ أنها حمل تعتد بوضع الحمل, أو غير حامل تعتد بالحيض, وكذا لا تطلقوا في الحيض لأن هذا الحيض لم يعتبر عندنا من العدة, ولا الطهر الذي يليه, فينبغي أن يحتسب فيه ثلاث حيض أخر فتطول العدة عليها بلا تقريب

And do not issue *talaaq* during a *tuhr* in which intimacy had taken place, because it would not be known, in such a case, whether she is pregnant and thus her *`iddat* ends when she gives birth, or if she is not pregnant and thus her *`iddat* is three periods of *haidh*. Similarly, do not issue *talaaq* during *haidh*, because that *haidh* will not be counted by us (the Ahnaaf) as being from the (three waiting periods) nor the *tuhr* after it, but only the three (periods of *haidh*) after that, and this would cause the *`iddat* to be very lengthy upon her without any approximation.

ثم لكل واحد منا ومن الشافعي رحمه الله في هذا المقام قرائن تستنبط من نفس الآية بوجوه متعددة فقد ذكرتها في التفسيرا الأحمدية, بالبسط والتفصيل فطالعها إن شئت

Both us and Imaam ash-Shaafi`ee رحمة الله عليه derive the *qaraa'in* (*quroo'* or waiting periods) from the same Aayah through different facets. I have explained this in *at-Tafseeraat al-Ahmadiyyah* in greater detail and with further elucidation, so you may research it there if you wish.

ثم إن المصنف ذكر هاهنا من تفريعات الخاص على مذهبه سبع تفريعات, أربع منها ما تم الآن وثلاث منها ما سيجيء, وأورد بين هذه الأربعة والثلاثة بالعتراضين للشافعي علينا مع جوابهما على سبيل الجمل المعترضة فقال:

The author has mentioned seven branches with regards to the issue of *khaas*. Four have already passed now and three remain. Between the mentioning of the four and then the three, he has mentioned two objections Imaam ash-Shaafi`ee has against us (i.e. the Ahnaaf) along with our answers to those two objections. This has been done in the form of a parenthetical clause. He said:

(ومحللية الزوج الثاني بحديث العسيلة لا بقوله تعالى: حَتَّى تَنْكِحَ زَوْجاً غَيْرَهُ)

وهو جواب سؤال مقدر يرد علينا من جانب الشافعي وتقرير السؤال لابد فيه من تمهد مقدمة وهي:

أن الزوج إن طلق إمرأته ونكحت زوجاً آخر ثم طلقها الزوج الثاني ونكحها الزوج الأول يملك الأول مرة أخرى ثلاث تطليقات مستقلة بالإتفاق وإن طلق إمرأته ما دون الثلاث من واحد أو اثنتين ونكحت زوجاً آخر ثم طلقها الزوج الثاني ونكحها الزوج الأول فعند محمد والشافعي يملك الزوج الأول حينئذ ما بقي من الإثنين أو واحد

The author says: "The legalizing of the second husband, by the Hadeeth of *al-`Usaylah*, not by the Aayah:

{"*Until she marries a husband other than him.*"}

This is (stated by the author) as a reply to a question which is hidden (not mentioned here) from the part of Imaam ash-Shaafi`ee. Before mentioning his question it is necessary to prepare by giving an introduction, and that is:

If a husband divorces his wife, and she then marries another husband, and thereafter the second wife divorces her as well and she then remarries the first husband, the first husband will once again be in possession of three independent *talaaqs* (which he can issue), by consensus. If he now then divorces his wife with less than three *talaaqs*, such as by divorcing with one *talaaq* or two, and that divorced wife then marries another husband, and then that husband divorces her and she remarries the first husband (who had given her one *talaaq* or two), then in this case, according to Imaam Muhammad and Imaam ash-Shaafi`ee, the first husband (who had given only one *talaaq* or two) will possess only the remainder of the *talaaqs* which he had (i.e. not the full three. So if he had given one, he now will only have two. If he had given two, he now will only possess one *talaaq*.)

يعني إن طلقها سابقاً واحداً فيملك الآن أن يطلقها إثنين وتصير مغلظة, وإن طلقها سابقاً إثنين يملك الآن أن يطلقها واحداً لا غير

Meaning, if previously he had given her one *talaaq* (divorce), then now he can only give her two (more), and it will become *mughallazhah* (irrevocable). If previously he had issued two *talaaqs* to her, then now he only has one *talaaq* remaining.

وعند أبي حنيفة وأبي يوسف رحمهما الله يملك الزوج الأول أن يطلقها ثلاثاً ويكون ما مضى من الطلقة والطلقتين هدراً, لأن الزوج الثاني يكون محللاً إياها للزوج الأول بحل جديد وينهدم ما مضى من الطلقة أو الطلقتين والطلقات

فاعترض عليه الشافعي بأن المتمسك في هذا الباب هو قوله تعالى:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجاً غَيْرَهُ

وكلمة حَتَّى لفظ خاص وضع لمعنى الغاية والنهاية فيفهم منه أن نكاح الزوج الثاني غاية للحرمة الغليظة الثابتة بالطلقات الثلاث ولا تأثير للغاية فيما بعدهم فلم يفهم أن بعد النكاح يحدث حل جديد للزوج الأول ففي هذا إبطال موجب الخاص الذي هو <حَتَّى>

According to Imaam Abu Haneefah and Imaam Abu Yusuf رحمة الله عليهما, the first husband will again possess three *talaaqs* and whatever *talaaqs* he had issued prior (to this remarriage) will not be regarded as inconsequential, because the second husband had acted as a "halaalizer" of her for him, the first husband, by having made a new contract (of marriage), and thus whatever *talaaqs* had been issued before are wiped out.

For this reason, Imaam ash-Shaafi`ee objected to it (this view), saying that what is to be held onto in this issue is the Aayah:

{"*If he divorces her, she is not permissible for him until she marries a husband other than him...*"}

The word "*hattaa*" (until) is a word that is *khaas*, used to give the meaning of a limit and end, so what is understood from it is that the marriage with the second husband acts as an "end" for the prohibition (of marriage to the first husband) which had taken place with the issuing of the three *talaaqs*, and an end or limit has no effect on what comes after it, so it is not understood from this that after the (second marriage), a new exemption (i.e. three new *talaaqs*) are given to the first husband, because that would entail an invalidation of what is necessitated by *khaas*, which is "*hattaa*".

فلما لم يكن الزوج الثاني محللاً فيما وجد فيه المغيّا وهو الطلقات الثلاث ففيما لم يوجد المغيّا وهو ما دون الثلاث أولى أن لا يكون محللاً فلا يكون الزوج الثاني محللاً إياها للزوج الأول بحل جديد

So, since the second husband does not act as a "halaalizer" for that in which is found a limit, and that is the three *talaaqs* (divorces), then, in that in which a limit is not found, and that is (in the case of less than) three (divorces), it is more rightful that the second husband will not be making *halaal* (the wife for the first husband) with a new contract (i.e. three new *talaaqs*).

فيقول المصنف في جوابه من جانب أبي حنيفة: إن كون الزوج الثاني محللاً إياها للزوج الاول إنما نثبته بحديث العسيلة, لا بقوله:

حَتَّى تَنْكِحَ

كما زعمتم

The author says in his reply to this (objection of Imaam ash-Shaafi`ee) on the part of Imaam Abu Haneefah: "That the second husband makes the wife permissible for the first husband, we derive this from the Hadeeth of *al-`Usaylah*, not by the Aayah:

{"*Until she marries (a husband other than him)...*"}

Contrary to what you have claimed."

وبيانه أن امرأة رفاعة جاءت إلى رسول الله عليه الصلاة والسلام فقالت: إن رفاعة طلقني ثلاثاً فنكحت بعبد الرحمن بن الزبير فما وجدته إلا كهدبة ثوبي هذا تعني وجدته عنّيناً – فقال عليه الصلاة والسلام:

أَتُرِيْدِيْنَ أَنْ تَعُوْدِيْ إِلَى رِفَاعَةَ

فقالت: نعم, فقال عليه الصلاة والسلام:

لَا, حَتَّى تَذُوْقِيْ مِنْ عُسَيْلَتِهِ وَيَذُوْقَ هُوَ مِنْ عُسَيْلَتِكَ

فهذا الحديث مسوق لبيان أنه يشترط وطئ الزوج الثاني أيضاً ولا يكفي مجرد النكاح كما يفهم من ظاهر الآية, وهذا الحديث مشهور قبله الشافعي رحمه الله أيضاً لأجل اشتراط الوطئ للزوج الثاني, والزيادة بمثله على الكتاب جائز بالإتفاق

The explanation of this is that the wife of Hadhrat Rifaa`ah رضي الله عنه came to Rasoolullaah صلى الله عليه وسلم and said, "Rifaa`ah had divorced me, and thereafter I married `Abdur Rahmaan ibn az-Zabeer, but I found him to be like the edge of my garment, i.e. I found him to be impotent."[1] So Rasoolullaah صلى الله عليه وسلم said: "Do you desire to return to Rifaa`ah?" She said, "Yes." He said, "No, not until you taste from his honey and he tastes from yours."

[1] She claimed this, but in other *riwaayaat* (narrations) it is mentioned that Hadhrat `Abdur Rahmaan ibn az-Zabeer رضي الله عنه denied this claim, and it is proven that he had children, so the `Ulamaa have mentioned that she had said this in order to go back to Hadhrat Rifaa`ah رضي الله عنه.

This Hadeeth clarifies that marital relations with the second husband is stipulated (i.e. in order for her to again be permissible for the first husband), and just get married only is not enough, as would be understood from the literal meaning of the Aayah. This Hadeeth is well-known and is accepted by Imaam ash-Shaafi`ee رحمه الله also, with regards to the stipulation of intercourse with the second husband (for the validity of remarriage to the first husband). An addition of this kind upon (the ruling mentioned in) the Qur'aan is permissible by consensus.

وهذا الحديث كما أنه يدل على اشتراط الوطئ بعبارة النص فكذا يدل على محللية الزوج الثاني بإشارة النص, وذلك لأنه عليه الصلاة والسلام قال لها:

أَتُرِيدِيْنَ أَنْ تَعُوْدِيْ إِلَى رِفَاعَةَ

ولم يقل: أتريدين أن تنتهي حرمتك. والعود هو الرجوع إلى الحالة الأولى, وفي الحالة الأولى كان الحل ثابتاً لها, فإذا عادت الحالة الأولى عاد الحل وتجدد باستقلاله

وإذا ثبت بهذا النص الحل فيما عدم فيه الحل وهو الطلقات الثلاث مطلقاً ففيما كان الحل ناقصاً وهو ما دون الثلاث أولى أن يكون الزوج الثاني متمماً بالحل الناقص بالطريق الأكمل

This Hadeeth, just as it proves that marital relations is stipulated (for the validity of "*halaalah*") through *`ibaarat-un-nass* (that which is clearly mentioned in the text), similarly it proves that the second husband makes the (wife) Halaal (for the first husband), through *ishaarat-un-nass* (that which is derived from the text). That is because Rasoolullaah صلى الله عليه وسلم said:

"Do you desire to return to Rifaa`ah?"

He did not say, do you desire for your (being) prohibited to come to an end.

The return (mentioned here) is the return to the initial state. In the initial state, the permissibility (of her) was established (for him); thus, now that the initial state has returned, the permissibility (of her for him as well as the three *talaaqs*) returns as well and are renewed by the independence of (the second marriage, i.e. by having moved to a different husband).

Thus, when it is established through this *nass* (clear text) that the permissibility returns even in that case where there hadn't been

permissibility anymore, which is by him having given three *talaaqs*, then, in the case where permissibility was still found albeit to a weaker degree, such as in the case of him having given less than three *talaaqs*, it is even more rightful that the second husband acts completes the permissibility which had weakened (i.e. makes her completely permissible for the first husband once more).

ثم قال المصنف: (وبطلان العصمة عن المسروق بقوله: جَزَاءاً, لا بقوله: فَاقْطَعُوْا. وهذا أيضاً جواب سؤال مقدر يرد علينا من جانب الشافعي رحمه الله

وتقرير السؤال هاهنا أيضاً لابد فيه من تمهيد مقدمة وهي: إن السارق إذا سرق شيئاً من أحد وقطع يده فيها فإن كان المسروق موجوداً في يد السارق يردّ إلى المالك بالإتفاق, وإن كان هالكاً فعند الشافعي يجب الضمان عليه سواء هلك بنفسه أو استهلكه, وعند أبي حنيفة لا يجب الضمان قط إلا عند الإستهلاك في رواية

وذلك لأنه حين أراد السارق السرقة يبطل قبيل السرقة عصمة المال المسروق من يد المالك حتى يصير في حقه من جملة ما لا يتقوم, وتتحول عصمته إلى الله تعالى وهو مستغن عن ضمان المال

Thereafter, the author said: "And the nullification of the protection (*`ismat*) of the stolen item, because of the Aayah: {"*A recompense...*"} not because of the Aayah: {"*So cut (off their hands)...*"}"

This, too, is an answer given by him to a hidden question posed to us by Imaam ash-Shaafi`ee **رحمة الله عليه**.

Before mentioning the question it is necessary to first mention an introduction, and that is: the thief, when he steals something from someone and his hand gets cut off as a result, then, if the stolen item is still in his possession, it must be returned to the owner, and there is consensus on this. However, if the item was destroyed (used up), then, according to Imaam ash-Shaafi`ee he (the thief) is liable to compensate (the owner) for it, regardless of whether the item was destroyed by itself or he (the thief) destroyed it (used it). According to Imaam Abu Haneefah, on the other hand, the thief is not liable for compensation ever, except in one report (from him) that the thief is liable for compensation if he had destroyed it (he himself had used it up). That is so because, when the thief intends to steal

something, then just before the theft takes place, the protection (*`ismat*) of the wealth (i.e. its state of being sacred, not permissible for any other person to deal in it) becomes nullified until it becomes for him from the rest of that which is not straight, and its *`ismat* (protection) transfers to Allaah Ta`aalaa, and He is not in need of compensation of wealth.

وإنما يجب الرد إذا كان موجوداً لأنه لم يبطل ملكه وإن زالت عصمته, فلرعاية الصورة قلنا بوجوب المال ولرعاية المعنى قلنا بعدم ضمانه

واعترض عليه الشافعي بأن المنصوص في هذا الباب هو قوله تعالى:

وَالسَارِقُ وَالسَارِقَةُ فَاقْطَعُوْا أَيْدِيَهُمَا جَزَاءاً بِمَا كَسَبَا

والقطع لفظ خاص وضع لمعنى معلوم وهو الإبانة عن الرسغ, ولا دلالة له على تحول العصمة عن المالك إلى الله تعالى, فالقول ببطلان العصمة زيادة على خاص الكتاب

Returning the stolen item is only *waajib* if the stolen item still exists in the possession of the thief, and that is because the ownership of the item (by the owner) has not been nullified, but rather, its protection (*`ismat*, or sanctity) has been nullified. So, considering the scenario we say it is *waajib* to (return) the wealth (stolen item if it is still in the possession of the thief), but considering the meaning we say there is no compensation (if the item was destroyed or used up).

Imaam ash-Shaafi`ee objected to this, saying that the *nass* is upon the Aayah:

{"*The male thief and the female thief, cut off their hands as a recompense for that which they had committed...*"}

The word cutting (mentioned in the Aayah) is *khaas*, having a specific, known meaning, which is (in terms of "cutting the hand) "separation from the wrist". Nothing in this (Aayah) points out to the *`ismat* (protection of the item) transferring from the owner to Allaah Ta`aalaa, so the claim of the nullification of the protection is an addition to the *khaas* of the Qur'aan (which is invalid).

فأجاب المصنف عن جانب أبي حنيفة رحمه الله تعالى بأن بطلان العصمة من المال المسروق وإزالتها من المالك إلى اله تعالى إنما نثبته بقوله تعالى:

جَزَاءاً بِمَا كَسَبَ

لا بقوله:
فَاقْطَعُوْا

وذلك لأن الجزاء إذا وقع مطلقاً في معرض العقوبات يراد به ما يجب حقاً لله تعالى, وإنما يكون حقاً لله تعالى إذا وقعت الجناية في عصمته وحفظه, وإذا كان كذلك فقد شرع جزاؤه جزاءاً كاملاً وهو القطع ولا يحتاج إلى ضمان المال. غايته أنه إذا كان المال موجوداً في يده يردّ إليه لأجل الصورة, ولأن <جَزَى> يجيء بمعنى <كَفَى> فيدل على أن القطع هو كاف لهذه الجناية لا يحتاج إلى جزاء آخر حتى يجب الضمان

هذا نبذ مما ذكرته في التفسير الأحمدي وكفاك هذا

The author responds to the objection (by Imaam ash-Shaafi`ee) on behalf of Imaam Abu Haneefah رحمة الله عليه by saying that, (our view) that the *`ismat* (protection) of the stolen wealth transfers from the owner to Allaah Ta`aalaa is based on: {"*A recompense for what they had committed...*"} and not based on: {"*So cut (off their hands)...*"}

The reason behind this is that when the term *jazaa* (recompense) is used unrestrictedly in terms of punishments, then the intended meaning is, that (punishment) which has become *waajib* because it is a Haqq (Right) of Allaah Ta`aalaa), and it is only a Right of Allaah Ta`aalaa (rather than being a "right of the slave") if the crime falls into (that which is) under His Protection and Safeguarding. Since it is like that, then He has legislated its *jazaa* (recompense) as a complete recompense, and that is, the cutting (off of the hand of the thief), and He (Allaah) is not in need of compensation of wealth. At most, if the stolen wealth is (still existing) in the possession of the thief, it will be returned to the (original owner) out of regard for the scenario or (outward) form (i.e. the outward form or appearance is that it was stolen from the protection of the owner, Zaid, for example, but the reality is that it was stolen (by the thief) from the Protection of Allaah Ta`aalaa and that is why Allaah Ta`aalaa has legislated the *hadd* (punishment) of cutting the hand, because it is the Haqq of Allaah Ta`aalaa.)

The word *jazaa* (recompense) carries the meaning of *kafaa* (to be sufficient), and that points out that the (*hadd*) of cutting (his hand off) is sufficient as a

punishment for the crime he had committed and thus there is no need for an additional punishment, which would be that of making his liable for compensation of what he had stolen.

This is an excerpt from what I mentioned in *at-Tafseer al-Ahmadi*, and let that suffice you.

ثم ذكر المصنف بعد هذا البيان التفريعات الثلاثة الباقية على الحكم فقال:

(ولذلك صح إيقاع الطلاق بعد الخلع)

أي ولأجل أن مدلول الخاص قطعي واجب الإتباع صح عندنا إيقاع الطلاق على المرأة بعد ما خالعها خلافاً للشافعي رحمه الله تعالى

وبيانه أن الشافعي يقول: إن الخلع فسخ للنكاح فلا يبقى النكاح بعده, وليس بطلاق فلا يصح الطلاق بعده

After this explanation, the author begins with the last three branches (i.e. after mentioning the two objections and clarifying them, he has now started with the final three branches from the seven branches he goes into with regards to the term *khaas*). He says:

"For this reason, it is valid to give *talaaq* after *khula`* (divorce by way of monetary compensation, whereby the wife pays back the husband the mahr he had given her, or part of it, in return for him divorcing her.)

Meaning, because the purport of *khaas* is *qat`iyy* (absolute), *waajib* to follow and abide by, it is valid - according to us (Ahnaaf) for a *talaaq* to be issued upon a woman even after *khula`*, contrary to (the view of) Imaam ash-Shaafi`ee **رحمة الله عليه**.

The explanation of this is that Imaam ash-Shaafi`ee says: "*Khula`* counts as *faskh* (dissolution of the marriage); thus, no marriage remains after *khula`*, and nor is it a *talaaq* (divorce), so *talaaq* is not valid after it either."

وعندنا هو طلاق يصح إيقاع الطلاق الآخر بعده عملاً بقوله تعالى:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ

وذلك لأن الله تعالى قال أولاً:
الطَّلَاقُ مَرَّتَانِ فَإِمْسَاكٌ بِمَعْرُوْفٍ أَوْ تَسْرِيْحٌ بِإِحْسَانٍ

أي الطلاق الرجعي إثنان, أو الطلاق الشرعي مرة بعد مرة بالتفريق دون الجمع فبعد ذلك يجب على الزوج إما: إِمْسَاكٌ بِمَعْرُوْفٍ, أي مراجعة بحسن المعاشرة, أَوْ تَسْرِيْحٌ بِإِحْسَانٍ, أَي تخليل على الكمال والتمام

According to us (Ahnaaf), it is a *talaaq* and it is valid for a *talaaq* to be issued after it, because of the Aayah:

{"*Then if he divorces her, she is not permissible for him after that...*"}

And that is because Allaah Ta`aalaa said firstly:

{"*Talaaq is twice: (thereafter either) keep (her) with goodness or separate (from each other) with goodness.*"}

Meaning, *talaaq-e-raj`i* (revocable divorce) is twice, or, the Shar`i *talaaq* is one time after another time, with separation (between the two), not all at once. Thereafter, it is *waajib* on the husband to either keep her (take her back) with goodness, i.e. living with her in a good way, or setting her free with kindness, i.e. separation in a complete way.

ثم ذكر بعد ذلك مسألة الخلع فقال:

فَإِنْ خِفْتُمْ أَنْ لَّا يُقِيْمَا حُدُوْدَ اللهِ فَلَا جُنَاحَ عَلَيْهِمَا فِيْمَا افْتَدَتْ بِهِ

أي فإن ظننتم أيها الحكام أن لا يقيما – أي الزوجان – حدود الله بحسن المعاشرة والمروءة فلا جناح عليهما فيما افتدت المرأة به وخلصتها من الزوج وطلقها الزوج

Thereafter, he mentions the issue of *khula`* and he mentions the Aayah:

{"*But if you fear that they will not uphold the limits (set by) Allaah, then there is no sin on them if she gives back (the mahr in return for her khula`)...*"}

Meaning, if you (the wise men who have been appointed to reconcile between the spouses) think that they will not uphold the limits set by Allaah Ta`aalaa, by living together in goodness, then there is no sin on either of them if the woman gives back the *mahr* in order to free herself from the husband, and he gives her *talaaq* (in return).

فعلم أن فعل المرأة في الخلع هو الإفتداء وفعل الزوج هو ما كان مذكوراً سابقاً أعني الطلاق لا الفسخ, لأن الفسخ يقوم بالطرفين لا بالزوج وحده

ثم قال:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجاً غَيْرَهُ

أي فإن طلق الزوج المرأة ثالثاً فلا تحل المرأة للزوج من بعد الثالث حتى تنكح زوجاً غيره ووطئها وطلقها. فالشافعي رحمه الله يقول: إنه متصل بقوله: الطَلَاقُ مَرَّتَانِ, حتى تكون هذه الطلقة ثالثة, وذكر الخلع فيما بينهما جملة معترضة لأنه فسخ لا يصح الطلاق بعده

ونحن نقول: إن الفاء خاص وضع لمعنى مخصوص وهو التعقيب وقد عقب هذا الطلاق بالإفتداء فينبغي أن يقع بعد الخلع وهو أيضاً طلاق
غايته أنه يلزم أن تكون الطلقات أربعة إثنتان في قوله:

الطَلَاق مَرَّتَانِ

والثالثة الخلع, والرابعة هي هذه, ولكنه لا بأس به فإن الخلع ليس طلاقاً مستقلاً على حدة بل مندرج في الطلقتين

Meaning, if the husband divorces the wife three times, then the wife is not permissible for the husband after the third (divorce) until she marries a husband other than him, and he has intercourse with her, and thereafter he divorces her. Imaam ash-Shaafi`ee **رحمة الله عليه** said: "It is connected to the Aayah: {"*Talaaq is twice.*"} So that this becomes the third *talaaq*, and the mention of *khula`* between them is a parenthetical clause, because it is *fasakh* (dissolution of the marriage) and thus *talaaq* is not valid after it."

We (the Ahnaaf) say: The *faa'* (in the Aayah) is *khaas*, having a specific meaning, and that is *at-ta`qeeb* (consequence or following up), and this *talaaq* had been followed up by (the wife) ransoming herself (i.e. *khula`*), so it is necessary that it takes place after *khula`*, and so it is also a *talaaq*.

This would necessitate that there are four *talaaqs*: two mentioned in the Aayah:

{"*Talaaq is twice.*"}

The third being *khula`*, and the fourth being this one (i.e. a divorce being issued after *khula`*); however, there is no harm in that because *khula`* is not an independent *talaaq*, but rather, it falls under the two *talaaqs* (mentioned in the Aayah).

فكأنه قيل:

الطَلَاق مَرَّتَانِ

سواء كانتا رجعيتين <ف> حينئذ يجب: إِمْسَاكٌ بِمَعْرُوْفٍ أَوْ تَسْرِيْحٌ بِإِحْسَانٍ

أو كانتا في ضمن الخلع فحينئذ تكون بائنة

فإن طلقها بعد المرتين المذكورتين فيما قبل:

فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّى تَنْكِحَ زَوْجاً غَيْرَهُ

الآية

وعلى هذا التقرير إندفع ما قيل: إنه يلزم أن يكون الطلاق الذي بعد الخلع فقط حكمه عدم الحل, لا الذي ليس كذلك, وإنه يلزم أن لا يكون الخلع إلا بعد مرتين عملاً بقوله تعالى: <فَإِنْ خِفْتُمْ>

So it is as though it was said:

{"*Talaaq is twice.*"}

Whether they were *raj`i*, for then it would necessitate: {"*Keep her (with goodness) or free (her from marriage) with goodness...*"}

Or both of them (the *talaaqs*) are within the *khula`*, and then it (*khula`*) will be a *talaaq-e-baa'in* (irrevocable divorce).

If he divorces her after the two times mentioned previously (in the Aayah), then:

{"*Then she is not permissible for her thereafter until (unless) she marries a husband other than him...*"}

Based on this, what has been said comes forth: it necessitates that only the *talaaq* which occurs after *khula`*, its ruling is the absence of permissibility, not the one that is not as such, and it necessitates that *khula`* has to be after the two (*talaaqs*), based on the Aayah: {"*So if you fear...*"}

ولكن يرد أن هذا كله إنما إذا كان التسريح بالإحسان إشارة إلى ترك المراجعة كما حررت, وأما إذا كان إشارة إلى الطلقة الثالثة على ما روي عن النبي صلى الله عليه وسلم أنه قال:

هُوَ الطَلَاقُ الثَالِثُ

فحينئذ يكون قوله تعالى:

فَإِنْ طَلَّقَهَا

بياناً لذلك, ولا تعلق له بمسألة الخلع أصلاً, فيكون المعنى: أن بعد المرتين إما إمساك بمعروف بالمراجعة أو تسريح بإحسان بالطلقة الثالثة, فإن آثر التسريح بالإحسان فطلقها ثالثاً:

فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ

الآية

هذا خلاصة ما قالوا, والبسط في التفسير الأحمدي

However, it appears that all of this only appears to if "*at-Tasreeh bil-Ihsaan*" (letting the wife go, with goodness) implies not taking her back (i.e. issuing two *talaaq-e-raj`i* and then not taking her back). However, if it is an implication to issuing a third *talaaq*, based on the Hadeeth: "It (refer) to (giving) the third *talaaq*." Then in that case, the Aayah: {"*If he divorces her...*"} will be an explanation for it and has no connection, in essence, with the issue of *khula`*. So the meaning will be: after the issuing of two divorces, he has the choice of either keeping her with goodness, by taking her back, or releasing her (i.e. divorcing her) with goodness by the issuing of a third *talaaq*. If he chooses to rather release her, so he issues a third *talaaq*, then: {"*Then she is not permissible for him thereafter...*"}

This is a summary of what has been mentioned. For further detail, refer to *at-Tafseer al-Ahmadi*.

(ووجب مهر المثل بنفس العقد في المفوضة)

عطف على قوله: <صح إيقاع الطلاق>

وتفريع على حكم الخاص

أي ولأجل أن العمل بالخاص واجب ولا يحتمل البيان وجب مهر المثل بنفس العقد من غير تأخير إلى الوطئ في المفوضة, وهو إن كان بكسر الواو فالمعنى: <التي فوضت نفسها بلا مهر> وإن كان بفتح الواو فالمعنى: <التي فوضها وليها بلا مهر> وهو الأصح, لأن الأولى لا تصلح محلاً للخلاف إذ لا يصح نكاحها عند الشافعي رحمه الله

The author says: "In the case of a *mufawwadhah* (or *mufawwidhah*), *mahr-e-mithl* [2]will become *waajib* by the same contract."

This is a continuation from his statement, "The occurrence of *talaaq* is valid..." It is a branch off from the discussion on the ruling of *khaas*.

[2] *Mahr-e-Mithl* is "a *mahr* of similar (brides)". It applies in the case of a *nikaah* where no *mahr* was stipulated. In such a case, the bride receives *mahr-e-mithl*. *Mahr-e-Mithl* means, the same *mahr* as her female relatives from her father's side had received when they got married, such as her aunts, her sisters, and her female cousins (paternal only).

What he means is that, because acting on *khaas* is *waajib* and *khaas* does not carry the possibility of clarification, then, in the case of a *mufawwadhah* or *mufawwidhah*, the moment the marriage contract has been concluded, *mahr-e-mithl* becomes *waajib* without being delayed until the time of consummation. The difference between the two (*mufawwidhah* and *mufawwadhah*) is, the *mufawwidhah* is a woman who gives herself to a man without *mahr* (i.e. without any *mahr* being stipulated at all). A *mufawwadhah* is a woman who has been given to a man by her *wali* without any *mahr* (without stipulating any *mahr*), and that is the correct view (i.e. the correct view is that when the author used this word, he is referring to a *mufawwadhah* and not a *mufawwidhah*), because the first (a *mufawwidhah*) is subject to difference of opinion, because her *nikaah* is invalid according to Imaam ash-Shaafi`ee رحمة الله عليه (because according to the Shaafi`ee Madh-hab, *nikaah* without the permission of the *wali* is invalid.)

وتحقيقه أن المرأة التي فوضها وليها بلا مهر أو على أن لا مهر لها لا يجب المهر لها عند الشافعي رحمه الله إلا بالوطئ, فلو مات أحدهما قبل الوطئ لا يجب المهر لها عند الشافعي

وعندنا يجب كمال مهر المثل عند العقد في الذمة, ويجب أداؤه عند الوطئ والموت عملاً بقوله تعالى:

وَأُحِلَّ لَكُمْ مَا وَرَاءَ ذَلِكُمْ أَنْ تَبْتَغُوْا بِأَمْوَالِكُمْ

فقوله: أَنْ تَبْتَغُوْا, بدل من: وَرَاءَ ذَلِكُمْ, أو مفعول له بتقدير اللام, أي أحل لكم ما وراء المحرمات لأن تبتغوا بأموالكم. فالباء لفظ خاص وضع لمعنى معلوم وهو الإلصاق, وقيل: الإبتغاء لفظ خاص وضع لمعنى معلوم وهو الطلب

What it means is that, in the case of a woman who gives herself (to a man) without (stipulation) of *mahr* or on (the condition) that no *mahr* will be due to her, then, according to Imaam ash-Shaafi`ee رحمة الله عليه it is not *waajib* (on the man to give) *mahr* to her except with consummation (i.e. only if consummation of the marriage takes place); thus, if one of them dies before consummation of the marriage, then *mahr* is not *waajib* according to Imaam ash-Shaafi`ee. According to us (Ahnaaf), on the other hand, the full *mahr-e-mithl* is *waajib* from the moment the marriage contract is concluded, in terms of a responsibility (upon the man), and it is *waajib* upon him to give it (to

her) in the event of either consummation of the marriage or death, on the basis of the Aayah:

{"*And permissible for you is what is besides that, (provided) that you seek (them in marriage) with your wealth...*"}

The Aayah: {"*That you seek...*"} is a *badl* (substitute clause) for {"*What is other than that...*"} or, it is a *maf`ool lahu* (object) by there being a hidden (implied) *laam*, i.e. what is permissible for you is what is other than the prohibited things, so that you may seek (women in marriage) with your wealth. The *baa'* is a term that is *khaas*, used for a known meaning, and that is *al-Ilsaaq* (connecting). It has also been said that *al-Ibtighaa* (seeking) is a word that is khaas, used for a known meaning, which is "to seek".

وعلى كل تقدير يوجب أن يكون ابتغاء البضع ملصقاً بالمهر ذكراً, فإن لم يذكر في اللفظ فلا أقل من أن يكون ملصقاً في الوجوب على الذمة. ولكن بشرط أن يكون الإبتغاء صحيحاً حتى لو كان بالنكاح الفاسد يجب التراخي إلى الوطئ بالإجماع, وكذا لو كان هذا الإبتغاء لا بطريق النكاح بل بطريق الإجارة أو المتعة أو بطريق الزنا لا يحل ذلك الفعل ولا يجب المال أصلاً, وإليه يشير قوله تعالى:

مُحْصِنِيْنَ غَيْرَ مُسَافِحِيْنَ

وفي هذا المقام إعتراضات دقيقد بينتها في حاشية التفسير الاحمدي

In each case, it is necessary that seeking marriage should be mentioned in connnection with the *mahr*; if it is not mentioned, then it (*mahr-e-mithl*) is still *waajib* in terms of responsibilitiy. However, that is on condition that the seeking was done in a valid manner, so much so that in the case of a *faasid* (corrupt) *nikaah*, it (the obligation of giving the *mahr*) is deferred to consummation, according to *ijmaa`* (consensus). It is the same if the seeking was done through the means of hiring, or *mut`ah* (temporary marriage), or by way of *zinaa*. That action is not permissible, and the money (the *mahr*) is not *waajib*, in essence, and this is implied by the Aayah:

{"*Seeking chastity (through marriage, by your wealth), not committing (zinaa)...*"}

With regards to this issue there are some intricate objections which I have clarified in the marginal commentary of *at-Tafseer al-Ahmadi*.

(وكان المهر مقدراً شرعاً غير مضاف إلى العبد)

عطف على ما سبق, وتفريع على حكم الخاص, أي ولأجل أن العمل بالخاص واجب ولا يحتمل البيان كان المهر مقدراً من جانب الشارع غير مضاف تقديره إلى العباد. وبيانه أن تقدير المهر عند الشافعي رحمه الله مفوض إلى رأي العباد واختيارهم, فكل ما يصلح ثمناً يصلح مهراً عنده

وعندنا وإن كان لا يقدر في جانب الأكثر لكن يقدر في جانب الأقل وهو أن لا يكون أقل من عشرة دراهم عملاً بقوله تعالى:

قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْهِمْ فِيْ أَزْوَاجِهِمْ وَمَا مَلَكَتْ أَيْمَانُهُمْ

أي علمنا ما قدرنا عليهم في حق أزواجهم, وهو المهر

The author says: "*Mahr* is stipulated and determined (the amount) by the Sharee`ah, and it is not left up to the slave."

This is a continuation from what has preceded, and it is another branch off from the ruling of *khaas*. What he means is that, because acting on what is *khaas* is *waajib* and *khaas* does not carry the possibility of explanation, then, *mahr* is determined and stipulated by the Lawgiver (i.e. by Allaah Ta`aalaa Himself), and its (amount) is not determined by the slaves. The explanation of this is that, according to Imaam ash-Shaafi`ee **رحمة الله عليه**, the determining of the amount of *mahr* is left up to thoe opinion and choice of the slaves (i.e. of the people). According to him, whatever is valid to be used as a payment (in a business transaction) is valid to be used as *mahr*.

According to us (the Ahnaaf), even though the maximum limit of *mahr* has not been determined or fixed by the Sharee`ah, however, the minimum limit definitely has been determined, and that is: no less than 10 dirhams, based on the Aayah:

{"*We know what We had stipulated upon them with regard to their wives and what their right hands possess (i.e. slaves)...*"}

Meaning, We know what We had apportioned, fixed and determined for them in terms of the right of their wives, which is *mahr*.

فالفرض لفظ خاص وضع لمعنى التقدير, وكذلك ضمير المتكلم خاص على ما قالوا, وكذا الإسناد خاص عند صاحب التوضيح

The word *fardh* is *khaas*, used for a specific meaning, which is "*at-Taqdeer*" (to determine; fix; apportion). Similarly, the pronoun in the first-person is *khaas*, according to what they (the linguists) have mentioned. Similarly, *al-Isnaad* (the ascription) is *khaas*, according to the author of *at-Tawdheeh.*

فعلم أن المهر مقدر في علم الله تعالى, وقد بينه النبي عليه الصلاة والسلام بقوله:

لَا مَهْرَ أَقَلَّ مِنْ عَشَرَةِ دَرَاهِمَ

وكذا نقيسه على قطع اليد لأنه أيضاً عوض عشرة دراهم, فالتقدير خاص وإن كان المقدر مجملاً محتاجاً إلى البيان وهذا في اصطلاح الفقهاء. وأما في اللغة فهو حقيقة في الإيجاب والقطع, ولهذا قال الشافعي أن الفرض هاهنا بمعنى الإيجاب بقرينة تعديته ب <على> وعطف <ما ملكت أيمانهم> على <أزواجهم> لأن المهر لا يقدر في حق ما ملكت أيمانهم فيكون المراد به النفقة والكسوة وهو واجب في حق الأزواج وما ملكت أيمانهم جميعاً

Thus, it is knows that the stipulation and fixing of the mahr is in the Knowledge of Allaah Ta`aalaa, and Nabi صلى الله عليه وسلم had explained it, saying: "There is no mahr less than 10 dirhams (silver coins)."

We make *qiyaas* (analogical deduction) on that (Hadeeth) when it comes to the issue of cutting the hand (of a thief), so we say that in that case too, the item stolen must be something worth 10 dirhams (silver coins), because *at-Taqdeer* (apportioning; stipulating) is *khaas*, even if the thing apportioned; fixed; determined is mujmal (concise), requiring clarification, and this is according to the terminology of the Fuqahaa. As for linguistically, then its literal meaning is making something *waajib* (obligatory) and absolute. For this reason, Imaam ash-Shaafi`ee said that the *fardh* mentioned here has the meaning of "making something waajib", using as evidence the fact that it is made transitive by the use of "`*alaa*" (upon), and by the fact that "what your right hands possess" has been made `*atf* (coupled with) "their wives", and the (logic) behind this is that, there is no *mahr* for "what your right hands possess (i.e. slaves)", and so, (the intended meaning of *fardh* cannot be apportioning; determining of *mahr*), the intended meaning is *nafaqah*

(expenditure) and clothing (them, i.e. wives or slaves), and that is *waajib* whether it be wives or "what their right hands possess."

قلنا: تعديته ب على إنما هو لتضمين معنى الإيجاب, وعطف ما ملكت أيمانهم بتقدير <فَرَضْنَا> ثان أي وما فرضنا عليهم فيما ملكت أيمانهم, على أن يكون هذا بمعنى أوجبنا, والأول بمعنى قدرنا, هكذا قالوا. ثم ذكر المصنف رحمه الله دلائل كل من المسائل الثلاث فقال: (عملاً بقوله تعالى:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ

و

أَنْ تَبْتَغُوْا بِأَمْوَالِكُمْ

و

قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْهِمْ

فقوله: <عملاً> تعليل لقوله: <صح> الخ على طريق اللف والنشر المرتب, فقوله:

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ

ناظر إلى المسئلة الأولى, وقوله تعالى:

أَنْ تَبْتَغُوْا بِأَمْوَالِكُمْ

ناظر إلى المسئلة الثانية, وقوله:

قَدْ عَلِمْنَا مَا فَرَضْنَا عَلَيْهِمْ

ناظر إلى المسئلة الثالثة وقد بينت كل ذلك بالتفصيل تحت كل مسئلة فتأمل

ثم لما فرغ المصنف رحمه الله عن تعريف الخاص وحكمه تفريعاته أراد أن يبين بعض أنواعه المستعملة في الشريعة كثيراً وهو الأمر والنهي, فقال:

We (the Ahnaaf) say: the reason for it being transitive with "`*alaa*" (upon) is to give the meaning of obligating (as well), and the reason behind "what thier right hands possess" being `*atf* (coupled) to *at-Taqdeer* (apportioning), which is "*Faradhnaa*", i.e. "and what We determined regarding what their right hands possess," is a second (object), and the meaning is, in regards to "what their right hands possess", it (the term *faradhnaa*) gives the meaning of obligating, and in regards to the first one (i.e. their wives) it gives the meaning of "We stipulated; determined; fixed; apportioned". This is as they have mentioned.

Thereafter, the author mentions the proofs behind each of three *masaa'il* (rulings), so he says: "According to the Aayah:

{"*So if he divorces her, she is not permissible for him...*"}, and {"*That you seek (marriage to women) with your wealth...*"} and {"*We know what We had determined upon them...*"}

His statement: "According to," is a *ta`leel* (explanatory justification) for his statement, "It is valid", in the form of connecting and expanding (the meaning). The Aayah: {"*If he divorces her, then she is not permissible for him...*"} is (the evidence) for the first ruling. The Aayah: {"*That you seek (wives in marriage) with your wealth...*"} is (the evidence) for the second ruling. The Aayah: {"*We know what We had determined upon them...*"} is (the evidence) for the third ruling. I have explained all of that in detail under each ruling, so reflect.

Thereafter, once the author رحمة الله عليه completed his definition of *khaas*, and its ruling, and the the subjects he branches off into, he now intends to explain its different types used very often in the Sharee`ah, which is *amr* (command) and *nahi* (prohibition), so he says:

أنواع الخاص

4. Types of Khaas

الأَمْرُ

4.1. Al-Amr (Command)

(ومنه الأمر, وهو قول القائل لغيره على سبيل الإستعلاء: إفعل)

أي من الخاص الأمر, يعني مسمى الأمر لا لفظه, لأنه يصدق عليه أنه لفظ وضع لمعنى معلوم وهو الطلب على الوجوب. والقول مصدر يراد به المقول, لأن الأمر من أقسام اللفظ وهو جنس يشمل كل لفظ

The author says: "From it (the types of *khaas*), one of them is *amr* (command), and that is the saying of one person to one, by way of regarding himself as being higher and (in a higher position, having more authority), "Do (such-and-such)."

Meaning, from the types of *khaas* is *amr*, i.e. something called *amr*, not the term itself, because it is true that it (*amr*) is such a term used for a specific, known meaning, and that is: seeking to make something binding.

The word *qowl* is a *masdar* (root noun), and the meaning of it is "*maqool*" (something that is said), because *amr* is from the categories of *lafzh* (a word or term), and it (*lafzh*) is a *jins* (species) which encompasses all words.

وقوله: <على سبيل الإستعلاء> يخرج به الإلتماس والدعاء وبقي فيه النهي داخلاً فجرج بقوله <إفعل>

The statement of the author: "By way of thinking himself to be higher (or having more authority)." By this, asking, or requesting, and Du`aa, all of it is excluded. *Nahi* (prohibiting) remains, but that is also excluded when he says, "Do (such-and-such)."

والمراد بقوله <إفعل> كل ما كان مشتقاً من المضارع على هذه الطريقة سواء كان حاضراً أو غائباً أو متكلماً معروفاً أو مجهولاً, لكن بشرط أن يكون المقصود منه إيجاب الفعل, ويعد القائل نفسه عالياً سواء كان عالياً في الواقع أو لا, ولهذا نسب إلى سوء الأدب إن لم يكن عالياً

وبما ذكرنا إندفع ما قيل: إن أريد به إصطلاح العربية فلا حاجة إلى قوله: <على سبيل الإستعلاء> لأن الإلتماس والدعاء أيضاً أمر عندهم, وإن أريد به إصطلاح أهل الأصول فيصدق عليه ما أريد به التهديد والتعجيز لأنه أيضاً على سبيل الإستعلاء. وذلك لأنا لا نتكلم على

إصطلاح أهل الأصول, وليس المقصود مجرد الإستعلاء بل إلزام الفعل, وذا لا يصدق إلا على الوجوب بخلاف التهديد والتعجيز ونحوهما

The meaning of him saying, "Do (such-and-such): this refers to any (command) derived from the *mudhaari`* (present-tense) form of the verb, whether the command be in the form of third-person, second-person or first person (speaker), and whether known or unknown. The condition is that the intended person must be *eejaab-ul-fi`l* (making a certain action binding) and that the speaker considers himself to be higher (than the one he is commanding), whether he really is higher or he isn't. It is for this reason that issuing a command is regarded as bad manners (*soo'-ul-adab*) if the one giving the command isn't actually higher (in a higher position) than the one he is issuing the command to.

Based on that, what has been mentioned comes forward: if what is intended by (*amr*) is the terminology of it as used by the (people) of Arabic (i.e. the linguists), then there would have been no point in saying "by way of authority or being higher", because according to them, even requests, petitioning, asking, Du`aa, etc. falls under comand. However, if what is intended by it is the meaning as used in the terminology of the people of Usool (the Usooliyyeen), then that would apply even to using it with the intention of warning of or making something too difficult (upon someone else), because that is also "considering oneself to be higher," (according to the Usooliyyeen). That's why we do not mean it according to the terminology of the people of Usool. Also, the intention is not simply *al-Isti`laa* (considering oneself to be higher than another), but rather, there must be *ilzaam-ul-fi`l* (making an action binding on someone else). So, it (*amr*) is not true except in the meaning of *wujoob* (making something binding or obligatory), not in the meaning of warning, or making something too difficult or impossible, etc.

(ويختص مراده بصيغة لازمة)

بيان لكون الأمر خاصاً, يعني يختص مراد الأمر – وهو الوجوب – بصيغة لازمة للمراد. والغرض منه بيان الإختصاص من الجانبين, أي لا يكون الأمر إلا للوجوب ولا يثبت الوجوب إلا من الأمر دون الفعل فيكون نفياً للإشتراك والترادف جميعاً. وذلك بأن يقال: إن دخول الباء هاهنا على المختص على طريقة قولهم: <خصصت فلاناً بالذكر> فتكون الصيغة مختصة بالوجوب دون الإباحة والندب وهذا نفي الإشتراك. ويكون معنى قوله <لازمة> أن الصيغة لازمة للمراد ولا

تنفك عنه فلا يكون المراد مفهوماً من غير الصيغة وهو الفعل وهذا نفي الترادف. أو يقال: إن الباء داخلة على المختص به كما هو أصلها, أي لا يفهم هذا المراد بغير الصيغة وهو الفعل فيكون هو نفياً للترادف

The author says: "Its meaning (i.e. the meaning of *amr*) is restricted to the binding tense (a word or text that makes it binding, not an action)."

This is an explanation of why *amr* is *khaas*. What he means is that, the purpose of *amr* - which is *wujoob* (to make something binding) - only comes when there is a text (i.e. a word or saying) or tense) that makes its binding. The objective of it is the explanation of being *khaas* from both sides, i.e. *amr* cannot be except for *wujoob*, and *wujoob* cannot come except from *amr*, not from a verb. Thus, *amr* itself precludes the possibility of *ishtiraak* (having more than one meaning) and *taraaduf* (having near-synonyms) both. That is by saying: the *baa'* here being added to the thing made *khaas*, like, for example, in the statement: **خصصت فلاناً بالذكر** (I specified so-and-so for mention.) The tense is specific for *wujoob* (being obligatory), not permissibility or recommendation, and this is a precluding of other meanings.

ثم قوله <لازمة> إن حمل على اللازم الأعم فيكون هو أيضاً نفياً للترادف لأن الملزوم لا يوجد بدون اللازم فلا يفهم نفي الإشتراك قط, فينبغي أن يحمل اللازم على اللازم المساوي, أي لا يوجد المراد بدون الصيغة ولا الصيغة بدون المراد فقد فهم حينئذ نفي الترادف والإشتراك جميعاً كناية. ثم صرح بعد ذلك بنفي الترادف قصداً فقال: (حتى لا يكون الفعل موجباً) أي إذا كان المراد مخصوصاً بالصيغة لا يكون فعل النبي عليه الصلاة والسلام موجباً على الأمة من غير مواظبته عليه الصلاة والسلام

(خلافاً لبعض أصحاب الشافعي رحمه الله)

فإنهم يقولون: إن فعل النبي عليه الصلاة والسلام أيضاً موجب إما لأنه أمر وكل أمر للوجوب, وإما لأنه مشارك للأمر القولي في حكم الوجوب

Thereafter, with regards to his statement of "binding": if it is taken to mean a reference to general binding, then that is also a precluding of any possibility of other meanings, because something cannot be "binding"

(*malzoom*) without a *laazim* (something that makes it binding), so the precluding of multiple meanings is not understood from it; thus, it must be taken to mean an equal binding, i.e. the meaning (of *amr*) cannot be found without a text (word, making it binding) nor can there be a text (giving *amr*) without a meaning (i.e. without something being binding as a result therefrom); thus, the preclusion of multiple meanings and near-synonyms is understood from this by way of implication. Thereafter, he (the author) explicitly precludes near-synonyms in terms of objective, saying: "So much so that an action cannot be a *moojib* (an obligator)." i.e. when the intended meaning (of the *amr* or command) is specific to the text (the word of *amr*), then an action of Nabi **صلى الله عليه وسلم** cannot make something *waajib* upon the Ummah except if he had continuity upon that action.

The author says: "(This is) contrary to some of the companions (i.e. followers) of Imaam ash-Shaafi`ee **رحمة الله عليه**."

That is because they say: "The action of Nabi **صلى الله عليه وسلم** also acts as a *moojb* (obligator), either by being an *amr* (in itself), and every *amr* (command) is for *wujoob*, or because it partners verbal command in regards to the ruling of being *waajib* (obligatory)."

وهذا الخلاف بيننا وبينهم في كل ما لم يكن سهواً منه عليه الصلاة والسلام ولا طبعاً ولا مخصوصاً به, وإلا فعدم كونه موجباً بالإتفاق

(للمنع عن الوصال وخلع النعال)

<متعلق بقوله: <حتى لا يكون الفعل موجباً

وحجة لنا. أي لمنعه عليه الصلاة والسلام أصحابه عن صوم الوصال وخلع النعال. روي أنه عليه الصلاة والسلام واصل فواصل أصحابه فأنكر عليه الموافقة في وصال الصوم فقال عليه:

أَيُّكُمْ مِثْلِيْ؟ يُطْعِمُنِيْ رَبِّيْ وَيَسْقِيْنِيْ

This difference between us and them is in those issues wherein it was not something done unintentionally by Rasoolullaah **صلى الله عليه وسلم**, nor an action that was done on a *tab`i* (human nature) basis, nor something that

was specific to him, because in such cases there is consensus on it (such actions) not being a *moojib* (obligator).

The author says: "Because of the prevention from the fasting of *wisaal* (continuous fasting) and the removal of the sandals."

This is connected to his statement: "An action is not considered to be a *moojib* (obligator)."

One proof of ours (Ahnaaf) regarding this is Rasoolullaah **صلى الله عليه وسلم** preventing Sahaabah from the fast of *wisaal* (continuous fast) and removing their sandals. It is narrated that Nabi **صلى الله عليه وسلم** used to fast continuously (i.e. without *iftaar*), so the Sahaabah started to do the same, so Nabi **صلى الله عليه وسلم** disapproved of them following him in the action of fasting continuously, and he said, "Who of you is like me? My Rabb gives me to eat and drink."

يعني أنتم لا تستطيعون الصيام متواصلة الليل والنهار, ولي قوة روحانية عن عند الله تعالى, أطعم عنده أسقي من شراب المحبة كما قال قائل:

وذكرك للمشتاق خير شراب ***** وكل شراب دونه كسراب**

ولهذا ترى الأمة المجاهدين يفطرون بشرب قطرة في أربعينات ليخرج عن حد الكراهة, وهذا في صوم الفرض والنفل سواء. وروي أنه عليه الصلاة والسلام كان يصلي بأصحابه إذ خلع نعليه فخلعوا نعالهم, فلما قضى صلاته قال:

مَا حَمَلَكُمْ عَلَى إِلْقَائِكُمْ نِعَالَكُمْ؟

قالوا: رأيناك ألقيت نعليك, قال:

إِنَّ جِبْرِيْلَ عَلَيْهِ السَلَامُ أَخْبَرَنِيْ أَنَّ فِيْهِمَا قَذِراً, إِذَا جَاءَ أَحَدُكُمْ الْمَسْجِدَ فَلْيَنْظُرْ فَإِنْ رَأَى فِيْ نَعْلَيْهِ قَذِراً فَلْيَمْسَحْهُ وَلْيُصَلِّ فِيْهِمَا

Meaning, "You (the Sahaabah) don't have the ability to fast continuously, night into day (without *iftaar*), but I have been given *Roohani* power to do

that from Allaah Ta`aalaa. I am given to eat by Him and I drink from (the cup of) Love (of Allaah), as one poet says:

"*For the ardent seeker, Your Remembrance is the best of drinks; every drink besides it is like a mirage.*"

It is for this reason that you find those from the Ummah who strive hard (in the `Ibaadat of Allaah, a reference the author is making to some of the Awliyaa) fasting for forty (days at a time), making *iftaar* by just drinking a drop of water in order to avoid falling into the *karaahah* (that which is *makrooh*, which is fasting continuously).

This ruling (*makrooh* to fast continuously) applies to the fasts that are *fardh* and the fasts that are *nafl*, equally.

It is narrated that once, Nabi صلى الله عليه وسلم was once performing Salaah with the Sahaabah, and he removed his sandals, so they removed their sandals. Once the Salaah was complete he asked them, "What caused you to remove your sandals?" They said, "We saw you removing your sandals." He said, "Jibreel عليه السلام informed me that there was some impurity on them. When one of you comes to the Masjid, if he sees some impurity on his sandals, let him wipe them and then perform Salaah in them."

هذه تمسكات أبي حنيفة رحمه الله. أما الشافعي رحمه الله فقال: تارة على سبيل التنزل: إن الفعل للوجوب كالأمر لأنه عليه الصلاة والسلام شغل عن أربع صلوات يوم الخندق فقضاهن مرتبة وقال:

صَلُّوْا كَمَا رَأَيْتُمُوْنِيْ أُصَلِّيْ

فجعل متابعة أفعاله لازمة لأمته

This is the view of Imaam Abu Haneefah رحمة الله عليه. As for Imaam ash-Shaafi`ee رحمة الله عليه, then he says - sometimes just speaking hypothetically - "An action is for *wujoob* just as an *amr* (command) is, (and the proof for this is) that Nabi صلى الله عليه وسلم was delayed from performing four Salaats on the day of the Battle of Khandaq, and later he performed *qadhaa* of all four at the same time. Thereafter he said, "Perform Salaah as you see me perform

Salaah." Thus, he made the following of his actions binding upon his Ummah.

فأجاب عنه المصنف رحمه الله بقوله:

(والوجوب أستفيد بقوله عليه الصلاة والسلام: صَلُّوْا كَمَا رَأَيْتُمُوْنِيْ أُصَلِّيْ, لا بأفعاله)

إذ لو كان الفعل موجباً لأتبعوه بمجرد رؤية الفعل ولم يحتاجوا إلى هذا القول أصلاً

وقال تارة على سبيل الترقي: إن الفعل قسم من الأمر لأن الأمر نوعان: قول وفعل, لأنه أطلق الله تعالى لفظ الأمر على الفعل في قوله:

وَمَا أَمْرُ فِرْعَوْنَ بِرَشِيْدٍ

أي فعله لأن القول لا يوصف برشيد وإنما يوصف بالسديد

فأجاب المصنف عنه بقوله:

(وسمي الفعل به لأنه سببه)

أي سمي الفعل بلفظ الأمر لأن الأمر سبب للفعل فيكون من باب المجاز وإنما الكلام في الحقيقة

ولما فرغ عن نفي الترادف قصداً شرع في نفي الإشتراك قصداً فقال:

The author **رحمة الله عليه** responded to that by saying: "The aspect of it being waajib is derived from Nabi **صلى الله عليه وسلم** saying, "Perform Salaah the way you see me perform Salaah." The obligation comes from this (verbal command) of Nabi **صلى الله عليه وسلم** and not his actions. Because, had it been obligatory on account of action alone, then the Sahaabah would have followed him the moment they saw him do this action and there would have been no need for this statement (from Rasoolullaah **صلى الله عليه وسلم**) in the first place.

Imaam ash-Shaafi`ee رحمة الله عليه also said sometimes, by way of raising (the argument, i.e. from a weaker argument to a stronger argument): "Action is a part of *amr* (command), because *amr* is of two types: *qowl* (verbal) and *fi`l* (action). This is because Allaah Ta`aalaa used the term "*amr*" (in the Qur'aan) to refer to an action:

{"*And the amr (word) of Fir`own was no right guide.*"}

Meaning, his action, because a *qowl* (word) is not described with the word "*rasheed*", but rather, for qowl (a word), it is described with "*sadeed*" (straight).

The author رحمة الله عليه responds to that by saying: "A *fi`l* (action) is named (*amr*, sometimes) because it is the cause."

Meaning, (sometimes) an action is referred to by the term "*amr*" (command), because an *amr* (command) is the cause of the action being done, so (the action is termed *amr*) by way of *majaaz* (metaphor), but the discussion (here) is about the reality (i.e. in reality an action is not a command, though it may be termed as such metaphorically.)

After ending the discussion on precluding near-synonyms in terms of objective (of the *amr*), he now begins the discussion on the preclusion of multiple meanings in terms of the objective, so he says:

موجب الأمر

(وموجبه الوجوب, لا الندب والإباحة والتوقف)

يعني أن موجب الأمر الوجوب فقط عند العامة, لا الندب كما ذهب إليه بعض, ولا الإباحة كما ذهب إليه بعض, ولا التوقف كما ذهب إليه بعض, ولا الإشتراك لفظاً أو معنى بين الثلاثة أو الإثنين كما ذهب إليه آخرون, ولم يذكره المصنف لأنه يفهم مما ذكره إلتزاماً

What is Necessitated by Amr

The author says: "What is necessitated by it is *wujoob* (obligation), not recommendation, or permissibility, or *tawaqquf* (reservation)."

What he means is that, what is necessitated by a command (*amr*) is that the thing being ordered is *waajib*, according to the majority; not recommended like some say, or permissible like others say, or *tawaqquf* (reservation) like others say, nor multiplicity in word or meaning between three or two like others say. This has not been mentioned by the author because it is understood by necessity from what he has mentioned.

فأهل الندب يقولون: الأمر للطلب, فلا بد أن يكون جانب الفعل فيه راجحاً حتى يطلب وأدناه الندب وهذا كقوله تعالى:

فَكَاتِبُوْهُمْ إِنْ عَلِمْتُمْ فِيْهِمْ خَيْراً

وأهل الإباحة يقولون: إن معنى الطلب أن يكون مأذوناً فيه ولا يكون حراماً وأدناه هو الإباحة, وهذا كقوله تعالى:

فَاصْطَادُوْا

والمتوقفون يقولون: إن الأمر يستعمل لستة عشر معنى كالوجوب, والإباحة, والندب, والتهديد, والتعجيز, والإرشاد, والتسخير, وغير ذلك فما لم تقم قرينة على أحدها لم يعمل به فيجب التوقف حتى يتعين المراد

وعندنا الوجوب حقيقة الأمر فيحمل عليه مطلقه ما لم تقم قرينة خلافه وإذا قامت قرينته يحمل عليه على حسب المقام

The people who say *amr* is for nadb (recommendation) say: "*Amr* is for *talab* (seeking), so it's necessary that the part of the verb therein be preponderant so that it can be sought (i.e. so that we can do what the verb is saying), and the nearest (meaning, i.e. the correct one) is that of nadb (recommendation). This is like the Aayah:

{"*Give them such writing (of emancipation) if you know of goodness in them...*"}

The people who hold the view that amr (command) is for *ibaahah* (permissibility), they say: "The meaning of *talab* (seeking) is that what is in it is permitted and not Haraam (prohibited), and thus its nearest meaning (correct meaning) is that of *ibaahah* (permissibility). This is like the Aayah:

{"*Then hunt.*"}

The people who believe in doing *tawaqquf* (reservation), they say: "*Amr* is used for 16 different meanings, such as *wujoob* (obligation), *ibaahah* (permissibility), *nadb* (recommendation), *tahdeed* (warning), *ta`jeez* (to demonstrate the incapability of the one being commanded), taskheer (subjugating), and other than it. So, as long as there is no supporting evidence to show which is the intended meaning of the amr, it (the command) is not acted upon, but *tawaqquf* (reservation) is done until the intended meaning is known."

According to us (the Ahnaaf), *wujoob* (being obligatory) is the literal meaning of an *amr* (command), so it (the *amr*) is left upon it's *mutlaq* (unrestricted) state so long as there is no supporting evidence opposing it. In the event of there being supporting evidence opposing it, it (the *amr*) will be judged according to that, based on the situation."

(سوء كان بعد الحظر أو قبله)

متعلق بقوله: <وموجبه الوجوب> وردٌّ على من قال: إن الأمر بعد الحظر للإباحة وقبله للوجوب على حسب ما يقتضيه العقل والعادة كقوله تعالى:

وَإِذَا حَلَلْتُمْ فَاصْطَادُوْا

ونحن نقول: إن الوجوب بعد الحظر أيضاً يستعمل في القرآن كقوله تعالى:

فَإِذَا انْسَلَخَ الْأَشْهُرُ الْحُرُمُ فَاقْتُلُوْا الْمُشْرِكِيْنَ حَيْثُ وَجَدْتُمُوْهُمْ

والإباحة في قوله تعالى:

وَإِذَا حَلَلْتُمْ فَاصْطَادُوْا

لم يفهم من الأمر بل من قوله تعالى:

أُحِلَّ لَكُمْ الطَّيِّبَاتُ

ومن أن الأمر بالإصطياد إنما وقع منة ونفعاً للعباد, وإذا كان فرضاً فيكون حرجاً عليهم, فينبغي أن يكون الأمر عند الإطلاق للوجوب وإنما يحمل على غيره بالقرائن والمجاز

The author says: "It is the same whether it (the *amr*) comes after *hazhr* (a prohibition) or before it."

This is connected to his statement, "(*Amr*) necessitates *wujoob* (obligation)."

It is in reply to those who claim that when an *amr* (command) comes after prohibition, then it signifies *ibaahah* (permissibility), and if it comes before a prohibition, then it signifies *wujoob* (obligation), based on what is neccesitated by the *`aql* (intellect) and *`aadah* (habit), as in the Aayah:

{"*So when you are free (from ihraam), then hunt.*"}

We (the Ahnaaf) say: (*Amr* intending) *wujoob* after the prohibition is used in the Qur'aan as well, as in the Aayah:

{"*So when the Sacred Months have passed, then kill the Mushrikeen wherever you find them...*"}

And *ibaahah* (permissibility) as in the Aayah:

{"*So when you are free (from ihraam), then hunt.*"}

It is not understood from the *amr* (command), but rather, from the Aayah:

{"*The pure things have been made permissible for you.*"}

And also, it is understood from the fact that the command of hunting occurred as a favour and benefit for the slaves (of Allaah Ta`aalaa); were it to be *fardh* (compulsory), it would be a hardship upon them, so it is necessary that an *amr* (command) generally and unrestrictedly gives the meaning of *wujoob* (obligation), and it is only carried upon a different meaning (such as permissibility, or recommendation, etc.) if there are supporting evidences or metaphorical speech (to show that this is the case).

ثم شرع في بيان دلائل الوجوب فقال:

(لانتفاء الخيرة عن المأمور بالأمر بالنص)

أي إنما قلنا أن موجبه الوجوب لانتفاء الإختيار عن المأمورين المكلفين بالأمر بالنص وهو قوله تعالى:

وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَى اللهُ وَرَسُوْلُهُ أَمْراً أَنْ يَكُوْنَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ

لأن معناه: إذا حكم الله ورسوله بأمر فلا يكون المؤمن ولا مؤمنة أن يكون لهم الإختيار من أمرهما, أي إن شاؤا قبلوا أمر وإن شاؤا لم يقبلوا بل يجب علهيم الإيتمار بأمرهما, ولا يكون ذلك إلا في الوجوب

وقيل: النص هو قوله تعالى:

مَا مَنَعَكَ أَنْ لَا تَسْجُدَ إِذْ أَمَرْتُكَ

خطاباً لإبليس اللعين, أي ما بقي لك الإختيار بعد أن أمرتك, فلم تركت السجود؟

Thereafter, the author begins explaining the evidences for (the claim that) *amr* is for *wujoob*, so he says:

"(One proof is the fact that) the one who is commanded has no choice, (as is mentioned) in the *Nass* (of Qur'aan)."

Meaning, we (the Ahnaaf) say that *amr* necessitates *wujoob* because those who are commanded and who are bound by the *amr* (command), they lose any choice in the matter, as is derived from *Nass* (clear text of Qur'aan), which is the Aayah:

{"*And it is not for any Mu'min or Mu'minah, when Allaah and His Rasool decree an Amr, that they should have a choice in their matter...*"}

Because the meaning of that is, when Allaah and His Rasool **صلى الله عليه وسلم** issue an *Amr* (Command), then a Mu'min and Mu'minah have no choice in their matter. They can't choose whether to accept it or not to accept it. Rather, it is upon them to abide by it, and this would not be the case except if amr is for *wujoob*.

And it is said: the *Nass* (clear text) is the Aayah:

{"*What prevented you from making sajdah, when I commanded you?*"}

This was addressed at Iblees the accursed. Meaning, after I commanded you, there remained for you no choice in the matter, so why did you not perform *sujood*?

(واستحقاق الوعيد لتاركه)

عطف على قوله:

<إنتفاء الخيرة>

إلى آخره, أي إنما قلنا إن موجبه الوجوب لاستحقاق الوعيد لتارك الأمر بالنص وهو قوله تعالى:

فَلْيَحْذَرِ الَّذِيْنَ يُخَالِفُوْنَ عَنْ أَمْرِهِ أَنْ تُصِيْبَهُمْ فِتْنَةٌ أَو يُصِيْبَهُمْ عَذَابٌ أَلِيْمٌ

أي فليحذر الذين يخالفون عن أمر الرسول عليه الصلاة والسلام ويتركونه أن تصيبهم فتنة في الدنيا أو يصيبهم عذاب أليم في الآخرة, وهذا الوعيد لا يكون إلا بترك الواجب. ولكن يرد عليه أنه موقوف على أن يكون هذا الأمر أيضاً للوجوب وهو ممنوع, وأنه لم لا يجوز أن تكون المخالفة على وجه الإنكار دون الترك؟

والجواب: أن سياق الكلام دال على أن هذا الأمر للوجوب بدون احتياج إلى برهان ومصادرة على المطلوب, وأن المخالفة في استعمالهم إنما تطلق على ترك العمل به فتأمل

(ولدلالة الإجماع والمعقول)

عطف على ما قلبه, وفي بعض النسخ: <وكذا دلالة الإجماع والمعقول يدلان عليه>

فحينئذ هو جملة مستقلة معطوفة على مضمون سابقها

The author says: "(And another proof is) that the one who abandons the amr becomes deserving of threat."

This is coupled to his statement: "(One proof is the fact that) the one who is commanded has no choice."

Meaning, we (the Ahnaaf) say the *amr* necessitates *wujoob* because of the fact that the person who leaves off acting upon the *amr* becomes deserving of threat, as is found in the *Nass* (of Qur'aan), like in the Aayah:

{"*So let those who oppose his command beware, lest a fitnah overtakes them or a painful punishment*."}

Meaning, let those who oppose and abandon the *amr* of Rasoolullaah صلى الله عليه وسلم beware lest some *fitnah* - (trial, tribulation) in the Dunyaa - afflicts them or a painful punishment overtakes them in the Aakhirah. This threat would not have come unless something *waajib* has been left off. However, some respond to this by saying that it is *mawqoof* (reserved; dependent) on whether this *amr* is also for *wujoob*, and it is prevented, and that, why is it not possible that the intended meaning of *mukhaalafah* (in this Aayah) can be "rejecting", rather than meaning "leaving it off"?

The answer is: the context (of the Aayah) points out that the *amr* is for *wujoob*, without the need for any (additional) evidence to prove this (is the intended meaning), and also, *mukhaalafah* in the usage (of the Arabs) refers is used in a *mutlaq* (unrestricted) way to refer to abandoning something, so reflect.

The author says: "And also, because *ijmaa`* (consensus) and the intellect points out to this (being the case)."

This is coupled to what is before it (i.e. other evidences to prove that *mukhaalafah* in this Aayah is a reference to abandoning, not rejecting). In some manuscripts it appears, "Similarly, the proofs of *ijmaa`* and intellect point out to it." In this case, it will be a separate sentence, coupled to the subject discussed before it (i.e. that *amr* is for *wujoob*).

وحاصله أن دلالة الإجماع تدل على أن الأمر للوجوب, لأنهم أجمعوا على أن كل من أراد أن يطلب فعلاً من أحد لا يطلب إلا بلفظ الأمر, والكمال في الطلب هو الوجوب, والأصل نفي الإشتراك والترادف فتعين أن موجبه الوجوب. وإنما قال: <دلالة الإجماع> لأن نفس الإجماع لم ينعقد على أن موجبه الوجوب لأنه مختلف فيه, بل إنما الإجماع منعقد على شيء يدل عليه. وكذا الدليل المعقول يدل على أن الأمر للوجوب, وهو أن تصاريف الأفعال كلها كالماضي

والمستقبل والحال, دال على معنى مخصوص, فينبغي أن يكون الأمر كذلك دالاً على معنى مخصوص وهو الوجوب

The summary of this is that, the *dalaat-ul-ijmaa`* (what is derived from ijmaa`) proves that amr is for *wujoob*, because they have *ijmaa`* that, whoever seeks the performance of a certain action from another, he does not seek it from him except by using the form of *amr*, and the highest and most complete form of seeking (the performance of something) is *wujoob* (i.e. making it obligatory). Also, the default is the negation of multiplicity in meaning as well as near-synonyms, so it is established that it (*amr*) necessitates *wujoob*. The reason the author said "*dalaalat-ul-ijmaa`*" (that which is derived from *ijmaa`*, rather than saying *ijmaa`*) is the fact that *ijmaa`* was not concluded upon this that *amr* is for *wujoob*, because it is a matter that is *mukhtalaf feehi* (disagreed upon). Rather, there is *ijmaa`* upon something which points out to it (therefore he says *dalaalat-ul-ijmaa`*, or "what is derived from *ijmaa`*".) Similarly, the proof of intellect points out to the fact that *amr* is for *wujoob*, because the different tenses of actions, whether past, future or present, all point out to a certain, specific meaning, so similarly, *amr* should also be pointing out to a certain, specific meaning, and that is *wujoob* (obligation).

وليس هذا لإثبات اللغة بالقياس بل لإثبات كون الأصل عدم الإشتراك. وقيل: المعقول هو أن السيد إذا أمر غلامه بفعل ولم يفعل إستحق العقاب, فلو لم يكن الأمر للوجوب لما استحق ذلك. وقد نقل في بيان النصوص والمعقول وجوه أخر تركتها للإطناب

ثم شرع المصنف رحمه الله في بيان أنه إذا لم يرد بالأمر الوجوب فماذا حكمه؟

فقال: (وإذا أريدت به الإباحة أو الندب) أي إذا أريدت بالأمر الإباحة أو الندب – وعدل عن الوجوب – فحينئذ اختلف فيه.

(فقيل: إنه حقيقة لأنه بعضه)

أي أن الأمر حقيقة في الإباحة والندب أيضاً لأن كل واحد منهما بعض الوجوب, وبعض الشيء يكون حقيقة قاصرة لأن الوجوب عبارة عن جواز الفعل مع حرمة الترك, والإباحة هي جواز الفعل مع جواز الترك, والندب هو جواز الفعل مع رجحانه فيكون كل منهما مستعملاً في بعض معنى الوجوب, وهو معنى الحقيقة القاصرة التي أريدت بلفظ الحقيقة وهو مختار فخر الإسلام

This is not to establish *lughah* (language) on the basis of analogical deduction, but rather, to establish the fact that the default is the absence of multiplicity (in meaning). It has also been said that, it is understood intellectually that when a master gives a command (*amr*) to his servant, and the servant does not carry it out, the servant becomes deserving of punishment. If *amr* (command) was not for *wujoob* (obligation), then the servant would not have been deserving of punishment.

In the explanation of the *nusoos* (texts) and intellect, other facets and reasonings have been mentioned, but I have omitted them for the sake of brevity.

Thereafter, the author رحمة الله عليه poses a question: "If the intended meaning of *amr* is not *wujoob*, then what is the ruling (of *amr*)?" So he says:

"If what is intended by it is permissibility or recommendation..."

Meaning, if the intended meaning of *amr* is permissibility or recommendation rather than obligation (*wujoob*), then it would be *mukhtalaf feehi* (disagreed upon).

He says: "It is said: It is a literal (meaning) because it is part of it."

Meaning, permissibility and recommendation also fall under the literal meaning of *amr*, because all of them are part of *wujoob* (obligation), and (in terms of *lughah*) part of something also acts as a deficient literal (of it), because *wujoob* refers to something that is permissible to do and prohibited to leave off. *Ibaahah* (permissibility) refers to something that is permissible to do and permissible to leave off. *Nadb* (recommendation) refers to something that is permissible to do and is preferred. Therefore, both of them (*ibaahah* and *nadb*) is used in part of the meaning of *wujoob*, and this is the meaning of them having a "deficient reality or literal state", a part of what is intended by the (actual) *haqeeqah* (literal), and that is the chosen (view) of Fakhr-ul-Islaam (i.e. Imaam al-Bazdawi رحمة الله عليه.)

(وقيل لا, لأنه جاوز أصله)

أي قيل: إنه ليس بحقيقة حينئذ بل مجاز لأنه قد جاوز أصله وهو الوجوب, لأن الوجوب هو جواز الفعل مع حرمة الترك, والإباحة جواز الفعل مع جواز الترك, والندب هو رجحان الفعل مع جواز الترك. فالحاصل أن من نظر إلى الجنس والذي هو جواز الفعل فقط ظن أنه مستعمل في

بعض معناه فيكون حقيقة قاصرة, ومن نظر إلى الجنس والفصل جميعاً ظن أن كلاً منهما معان متباينة وأنواع على حدة فلا يكون إلا مجازاً. وأما تحقيق أن هذا الإختلاف في لفظ الأمر أو في صيغ الأمر فمذكور في التلويح بما لا مزيد عليه

ثم لما فرغ المصنف رحمه الله عن بيان الموجب وحكمه أراد أن يبين أنه هل يحتمل التكرار أو لا؟ فقال:

(ولا يقتضي التكرار ولا يحتمله)
أي لا يقتضي الأمر باعتبار الوجوب التكرار كما ذهب إليه قوم ولا يحتمله كما ذهب إليه الشافعي رحمه الله

يعني إذا قيل مثلاً >صلوا< كان معناه إفعلوا الصلاة مرة, ولا يدل على التكرار عندنا أصلاً. وذهب قوم إلى أن موجبه التكرار لانه لما نزل الأمر بالحج قال أقرع بن حابس ألعامنا هذا يا رسول الله أم للأبد؟

ففهم التكرار مع أنه كان من أهل اللسان, ثم لما علم أن فيه حرجاً عظيماً أشكل عليه فسأل

The author says: "It's also been said that this is not the case, because then it (*amr*) would be exceeding its root."

Meaning, in such a case it would not be literal but rather, it would be metaphorical, because it would have exceeded its root or default, which is *wujoob*, because *wujoob* is the permissibility of an action with the prohibition of abandoning it; *ibaahah* (permissibility) is the permissibility of an action with the permissibility of abandoning it; *nadb* (recommendation) is the preference of performance of an action with the permissibility of abandoning it. So in summary, the one who looks at the *jins* and that which is the permissibility of an action only, he thinks that it can be used in some of its meaning and thus be a deficient literal. The one who looks at *jins* and *fasl* (separation) both, thinks that both are different meanings and separate types, so it cannot be except *majaaz* (metaphorical). As for the discussion on whether the difference of opinion comes from the word of *amr* itself or from the different (linguistic) forms of *amr*, then this is mentiond in *at-Talweeh* in greater detail.

Thereafter, after the author رحمة الله عليه ended his discussion on explaning what is necessitated by *amr* and what is the ruling of *amr*, he now goes into the subject of whether *amr* carries the possibility of repetition or not? (i.e., when a command is given, does it refer to doing it over and over or will doing the *amr* even once suffice as having fulfilled it?)

He says: "It (*amr*) does not necessitate *takraar* (repetition) and does not carry the possibility for it."

Meaning, the *wujoob* of *amr* does not necessitate that *takraar* (repetition) is intended, as some people claimed, and it does not have the possibility for it, like Imaam ash-Shaafi`ee رحمة الله عليه had (taken the view of). Meaning, when it is said, for example, "Perform Salaah," then the meaning is to perform Salaah just once and it does not point out to *takraar* (repetition), according to us (Ahnaaf), by default. Some people claimed that it necessitates *takraar* (repetition), because when the *Amr* (command) of Hajj was revealed, Hadhrat Aqra` ibn Haabis رضي الله عنه asked, "Is it only for this year of ours, Yaa Rasoolallaah, or for all time (i.e. every year)?" So, despite him being from the people of the language (i.e. an Arab), he understood *takraar* (repetition) from it (this *Amr*). When he knew that there would be great difficult in it (i.e. it being *fardh* upon a person to perform Hajj every single year of his life), it troubled him, so he asked concerning it.

وذهب الشافعي رحمه الله إلى أن محتمله التكرار, لأن <إضرب> مختصر من <أطلب منك ضرباً> وهو نكرة والنكرة في الإثبات تخص لكنها تحتمل العموم, فيحمل عليه بقرينة تقترن بها. والفرق بين الموجب والمحتمل أن الموجب يثبت بلا نية والمحتمل يثبت بالنية ودليلنا سيأتي

Imaam ash-Shaafi`ee رحمة الله عليه holds the view that *amr* has the *ihtimaal* (possibility) of *takraar* (repetition), because the command "*Idhrib*" (Hit; strike), is a shortened form of: "I seek from you a strike (i.e. that you strike, or hit)." It is *nakirah* (indefinite), and when there is *nakirah* in affirmation, it becomes *khaas*; however, it still carries the possibility of *`umoom* (being *`aam*, or general). So, it can be carried upon (*takraar*) if there is a supporting piece of evidence which it can attach to.

The difference between *moojib* (making obligatory) and *muhtamal* (carrying a possibility) is that *moojib* (i.e. an amr making something *waajib*) comes about even without any *niyyah* (intention), but *muhtamal* only comes about if there was a *niyyah* for it, and our proof will be mentioned later on.

(سواء كان معلقاً بشرط أو مخصوصاً بوصف أو لم يكن)

رد على بعض أصحاب الشافعي رحمه الله فإنهم ذهبوا إلى أنه إذا كان الأمر معلقاً بشرط كقوله تعالى:

وَإِنْ كُنْتُمْ جُنُباً فَاطَّهَّرُوْا

أو مخصوصاً بوصف كقوله تعالى:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوْا أَيْدِيَهُمَا

يتكرر بتكرر الشرط والوصف, فإن الغسل يتكرر بتكرر الجنابة والقطع يتكرر بتكرر السرقة.
وعندنا المعلق بالشرط وغيره, وكذا المخصوص بالوصف وغيره سواء في أنه لا يدل على التكرار ولا يحتمله

The author says: "Regardless of whether it is connected to a *shart* (condition), or made *khaas* on account of a *wasf* (description), or whether it is not like that."

This is in response to some of the companions (i.e. followers) of Imaam ash-Shaafi`ee **رحمة الله عليه**, because they hold the view that, when an *amr* (command) is connected to a *shart* (condition), like in the Aayah:

{"*And if you are in a state of janaabat (major impurity), then perform ghusl.*"}

Or if it is made *khaas* on account of a *wasf* (description), like in the Aayah:

{"*The male thief and the female thief - cut off their hands...*"}

It gets *takraar* (repetition) if the *shart* (condition) or *wasf* (description) is repeated, because *ghusl* is repeated if *janaabah* (major impurity) is repeated. Cutting off (the hand) is repeated if theft is repeated.

According to us (Ahnaaf), whether or not it (*amr*) is attached to a *shart* (condition) or other than it, or whether or not it has been made *khaas* with a

wasf (description) or other than it, it is the same in that it does not point out to *takraar* (repetition) and does not carry the possibility of (*takraar*).

(لكنه يقع على أقل جنسه ويحتمل كله)

إستدراك من قوله <ولا يحتمله> كأن قائلاً يقول: لما لم يحتمل الأمر التكرار عندكم فكيف يصح عندكم نية الثلاث في قوله <طلقي نفسك>؟

فيقول: إن الأمر يقع على أقل جنسه وهو الفرد الحقيقي ويحتمل كل الجنس وهو الفرد الحكمي أي الطلقات الثلاث, لا من حيث أنه عدد بل من حيث أنه فرداً, ولا من حيث أنه مدلوله بل من حيث أنه منوي. وإليه أشار بقوله: (حتى إذا قال لها طلقي نفسك إنه يقع على الواحد إلا أن ينوي الثلاث)

لأن الواحد فرد حقيقي متيقن, والثلاث فرد حكمي محتمل

The author says: "But it applies to the least of its *jins* (species) and carries the possibility for all of it."

This is a follow-up from his statement, "And it does not carry the possibility of it." As though someone had said, "Why does *amr* not carry the possibility of *takraar* according to you (Ahnaaf), because in that case, how does the *niyyah* of three (*talaaqs*) be valid in the statement of a man (to his wife): "Divorce yourself"?

So he (the author) says: "*Amr* applies to the least of its *jins*, and that is the literal individual, and it carries the possibility of (applying to) all of its *jins*, and that is the legal (i.e. in terms of the laws) individual, i.e. the three divorces, not from the aspect of it being a number, but from the aspect of it being an individual, and (also) not from the aspect of it beings its *madlool* (purport) but from the aspect of it being intended (*manwiyy*). This has been implied by his statement: "So much so that, if he says to her (his wife), 'Divorce yourself,' only one (*talaaq*) will fall unless he had intended three."

That is because one (*talaaq*) is the literal individual, known with certainty, whereas three is the legal individual, having a possibility (of being the case).

(ولا تعمل نية اثنتين إلا أن تكون المرأة أمة)

أي لا تصح نية الثنتين في قوله <طلقي نفسك> لأنه عدد محض ليس بفرد حقيقي ولا حكمي, وليس مدلولاً للفظ ولا محتملاً له إلا إذا كانت تلك المرأة أمة, لأن الثنتين في حقها كالثلاثة في حق الحرة فهو واحد حكمي كالثلاث في حقها

وأما إذا قال <طلقي نفسك ثنتين> فحينئذ إنما تقع ثنتان لأجل أنه بيان تغيير لما قبله لا بيان تفسير له لأن <طلقي> لا يحتمل ثنتين حتى يكون بياناً له.

ثم أورد المصنف رحمه الله دليلاً على ما هو المختار عند فقال: (لأن صيغة الأمر مختصرة من طلب الفعل بالمصدر الذي هو فرد)
أي إنما لا يقتضي الامر التكرار لأنه مختصر من طلب الفعل بالمصدر, فقولك <إضرب> مختصر من <أطلب منك ضرباً>, وقوله <صلوا> مختصر من <أطلب منكم الصلاة>, وقوله <طلقي> مختصر من <إفعلي فعل الطلاق>. والمصدر المختصر منه فرد لا يحتمل العدد, وكيف يحتمله (ومعنى التوحد مرعي في ألقاظ الوحدان) فالفعل المختصر منه أولى أن لا يحتمل العدد, وبهذا القدر تم الدليل على الأصل الكلي

The author says: "And the *niyyah* of two does not work (apply) except if the woman is a slave-girl."

Meaning, in the statement, "Divorce yourself," intending two (*talaaqs*) is not valid, because (two, in this case) is an absolute number; it is neither a literal individual (which is one) nor a legal individual (which is three). It is also not the purport of the word nor does it carry the possibility of it, except if the woman is a slave-girl, because in the case of a slave-girl, two divorces are like three in the case of a free woman. So, it is (then) one legal (divorce) which is like three in her case.

As for if he says (to his wife), "Divorce yourself twice." In this case, two *talaaqs* will fall because now it will be a case of an explanation for the sake of *taghyeer* (changing) what came before it, not an explanation of *tafseer* (explaining) it, because "divorce" does not carry the possibility of two so that it can be an explanation for it.

Thereafter, the author رحمة الله عليه mentions a *daleel* (proof) regarding what is the chosen (view), so he says: "Because the tense of *amr* (command) is a

shortened form of seeking an action by the *masdar* (root noun), which is singular (individual)."

Meaning, *amr* does not necessitate *takraar* because it is a shortened form of seeking an action with the *masdar* (root noun), so you saying: "Hit; strike," is a shortened form of, "I seek from you (that you) strike (or hit)." And his saying, "Perform Salaah." is a shortened form of, "I seek from you (that you perform) Salaah." And his saying, "Divorce," is a shortened form of, "Carry out the action of divorce." And the *masdar* (root noun) from which the shortened forms (for amr) are derived, does not carry the possibility of (a particular) number.

The author says: "The meaning of being alone, singular, is used in the words of oneness."

Thus, the action which is derived from it is has greater right not to carry the possibility of number. By this, the evidence for the comprehensive principle has been completed.

ثم قوله: (وذلك بالفردية والجنسية, والمثنى بمعزل عنهما) بيان للمثال المختص أعني قوله <طلق نفسك>

لأن الطلاق هو الذي يتصف بالجنسية والفرد الحكمي ومعزلية المثنى, وأما ما سواه فلا يعلم فيه الفرد الحكمي إلا في آخر العمر

(وما تكرر من العبادات فبأسبابها لا بالأوامر)

جواب سؤال مقدر يرد علينا وهو أن الأمر لم يقتض التكرار ولم يحتمله فبأي وجه تتكرر العبادات مثل الصلاة والصيام وغير ذلك؟

فيقول: إن ما تكرر من العبادات ليس بالأوامر بل بالأسباب, لأن تكرار السبب يدل على تكرار المسبب, فأيان وجد الوقت وجب الصلاة, ومتى يأتي رمضان يجب الصوم, ومهما قدر على ملك النصاب وجبت الزكاة, ولهذا لم يجب الحج في العمر إلا مرة لأن البيت واحد لا تكرار فيه

Thereafter, the author says: "And that is (the case with) *fardiyyah* (singularity) and *jinsiyyah* (species), and dual is excluded from both of them."

This is an explanation of an example of something *khaas*, i.e. his statement, "Divorce yourself," because *talaaq* is the thing that is described with *jinsiyyah* (species) and *al-fard al-hukmi* (legal singular; individual), and the exclusion of dual. As for what is besides it, then no legal singular; individual is not in it except at the end of (one's) life.

The author says: "Those `Ibaadaat which are repeated, they are (repeated) because of the (repetition) of the causes, not become of the (repetition) of the orders (*awaamir*, plural of *amr*)."

This is an answer given in response to a hidden question posed to us, which is: *amr* does not necessitate *takraar* and does not carry the possibility of it, so then, for what reason are the `Ibaadaat such as Salaah, fasting, etc. repeated? (Why is it not that performing Salaat even once fulfills the *amr* of Salaah, and there is no reason to perform it anymore thereafter?) So he (the author) answers that by saying, "Those that are repeated from the `Ibaadaat, they (are repeated) not because of the orders (*awaamir*) but because of the causes (*asbaab*), because when the cause (*sabab*) is repeated, then that which is affected by the *sabab* (cause) repeats as well. Thus, whenever the time (of Salaah) is found, Salaah becomes *waajib* (because the *sabab* of Salaah is the time). Whenever Ramadhaan comes, fasting becomes *waajib* (because the *sabab* of fasting is Ramadhaan). Whenever a person comes into possession of the *nisaab* (certain amount of money), Zakaah becomes *waajib* (because the *sabab* is possession of the *nisaab*). For this reason, Hajj is not *waajib* except once (in the life of a person), because the (Ka`bah) is one; there is no repetition in it.

لا يقال: إن الوقت سبب لنفس الوجوب, والأمر إنما هو سبب لوجوب الأداء فكيف يكون السبب مغنياً عن الأمر؟

لأنا نقول: إن عند وجود كل سبب يتكرر الأمر تقديماً من جانب الله تعالى فكان تكرار العبادات بتكرر الأوامر المتجددة حكماً

(وعند الشافعي رحمه الله لما احتمل التكرار تملك المرأة أن تطلق نفسها ثنتين إذا نوى الزوج)

بيان لخلاف الشافعي رحمه الله في أصل كلي على وجه يتضمن الخلاف في المسألة المذكورة. يعني أن عنده لما احتمل كل أمر التكرار سواء كان أمر الشارع أو غيره تملك المرأة في قوله

<طلقي نفسك> أن تطلق نفسها ثنتين إذا نوى الزوج ذلك, وإن لم ينو أو نوى واحدة فلها أن تطلق نفسها واحدة

It is not to be said: "*Waqt* (the time) is the *sabab* for the *wujoob* (obligation, i.e. of Salaah) itself, and the *amr* is the *sabab* for the *wujoob* (obligation) of *adaa* (discharging it), so how can the *sabab* (cause) be independent from the *amr*?"

That is because we (the Ahnaaf) say: "Upon the realisation of every *sabab* (cause), the *Amr* (Command) repeats from Allaah Ta`aalaa (i.e. each time the *sabab* of Salaah is found, which is the time, the Command of Allaah Ta`aalaa to perform Salaah is repeated); thus, the repetition of the `Ibaadaat is on account of the repetition of the *awaamir* (commands) which are renewed, in terms of the law."

The author says: "According to Imaam ash-Shaafi`ee **رحمة الله عليه**, because (*amr*) carries the possibility of *takraar* (repetition), the wife possesses (the ability) to divorce herself twice if the husband intended (that)."

This is an explanation of the disagreement of Imaam ash-Shaafi`ee **رحمة الله عليه** with an absolute principle (of Hanafi Usool) in a way that incorporates disagreement in the aforementioned issue. Meaning, according to him, because every *amr* carries the possibility of *takraar* whether the *amr* comes from the Lawgiver (i.e. Allaah Ta`aalaa) or from anyone else, the woman possesses the (ability), in the event of the husband saying to her, "Divorce yourself," to divorce herself twice, if the husband intended that. But, if he had not intended that, or he only intended one (divorce), then she can only divorce herself once (issue one divorce upon herself).

ثم أورد المصنف بتقريب بيان الأمر بيان اسم الفاعل لاشتراكهما في عدم احتمال التكرار, فقال: (وكذا اسم الفاعل يدل على المصدر لغة ولا يحتمل العدد)

فقوله: <يدل> بيان لوجه التشبيه, <ولا يحتمل> عطف عليه, وفي بعض النسخ <لا يحتمل> بدون الواو, فيكون هو بيان وجه التشبيه, وقوله <يدل> وقع حالاً

أي كذا اسم الفاعل لا يحتمل العدد حال كونه يدل على المصدر لغة, فهو احتراز عن اسم الفاعل الذي يدل عليه اقتضاءاً مثل قوله <أنت طالق> فإنه خارج عما نحن فيه وسيأتي بيانه

(حتى لا يراد بآية السرقة إلا سرقة واحدة, وبالفعل الواحد لا تقطع إلا يد واحدة)

تفريع على عدم احتمال اسم الفاعل التكرار, وإلزام على الشافعي رحمه الله فيما ذهب إليه

Thereafter, the author, closely after mentioning the explanation of *amr* (command), he mentions the explanation of *ism al-faa`il* (the subject; doer), because of them both not carrying the possibility of *takraar* (repetition), so he says: "Similarly, *ism al-faa`il* points out to the *masdar* (root noun), linguistically, and does not carry the possibility of (a certain) number."

His statement, "Points out (to)," is an explanation of the aspect of resemblance, and "And it does not carry the possibility," is coupled to it. In some manuscripts it appears, "It does not carry the possibility (of)," without the *waaw* (and), so then it is the explanation of the aspect of resemblance. And his statement, "Points out (to)," occurs as *haal* (the condition, or state). Meaning, similarly *ism al-faa`il* does not carry the possibility of (a certain) number because of it pointing out to the *masdar* (root noun), linguistically, so it is a caution regarding the *ism al-faa`il* which does necessarily point out to it, like the statement, "You are divorced." That is outside of what we are (discussing), and its explanation will come (later on).

The author says: "So much so that, the intended meaning of the Aayat (mentioning) theft is a single theft, and by one action only one hand is cut off."

This is a branching off regarding the issue of *ism al-faa`il* not carrying the possibility of *takraar* (repetition), and a binding upon Imaam ash-Shaafi`ee **رحمة الله عليه** regarding that (view) which he adopted.

بيانه: أن الشافعي رحمه الله يقول: إن السارق تقطع يده اليمنى أولاً, ثم رجله اليسرى ثانياً, ثم يده اليسرى ثالثاً, ثم رجله اليمنى رابعاً, لقوله عليه الصلاة والسلام:

مَنْ سَرَقَ فَاقْطَعُوْهُ فَإِنْ عَادَ فَاقْطَعُوْهُ, فَإِنْ عَادَ فَاقْطَعُوْهُ, فَإِنْ عَادَ فَاقْطَعُوْهُ

وعندنا لا تقطع اليد اليسرى في الثالثة, بل خلّد في السجن حتى يتوب, لأن السارق اسم فاعل يدل على المصدر لغة, والمصدر لا يراد به إلا الواحد أو الكل, وكل السرقات لا يعلم إلا في آخر العمر فصار الواحد مراداً بيقين, وبالفعل الواحد لا تقطع إلا يد واحدة

وأيضاً فاقطعوا دال على القطع وهو أيضاً لا يحتمل العدد فلا تثبت اليد اليسرى من الآية

The explanation of this is that, Imaam ash-Shaafi`ee **رحمة الله عليه** said: When a thief steals for the first time, his right hand gets cut off. If he steals for a second time, his left foot gets cut off. If he steals for a third time, his left hand gets cut off. If he steals for a fourth time, his right foot gets cut off. The basis for this is the Hadeeth:

"Whosoever steals, cut it (a limb) off. If he returns (to stealing), cut it (a limb) off. If he returns (to stealing), cut it (a limb) off. If he returns (to stealing), cut if (a limb) off."

According to us (Ahnaaf), if the person steals for a third time, his left hand will not be cut off, but rather, he will be imprisoned forever (i.e. indefinitely) until he makes *tawbah* (repents). That is because the word *saariq* (thief) is an *ism faa`il* (active participle, i.e. a noun which gives the meaning of a doer), and it points out to the *masdar* (root noun) linguistically, and a *masdar* (root noun), only one is intended by it, or all, and all thefts (of a person) are not known until the end (of his) life; thus, one becomes the intended meaning, with certitude. And, by one action nothing is cut off except one hand. Also, the word "*faqta`oo*" (cut off, used in the Aayah and in the Hadeeth) points out to cutting, and that also does not carry the possibility of (a certain) number; thus, cutting off the left hand cannot be established from the Aayah.

لا يقال: فينبغي أن لا تقطع الرجل السيرى في الكرة الثانية أيضاً لأنا نقول: إن الرجل غير معترضة بها في الآية فلا بأس أن يثبت بنص آخر

It shoud not be said: "Then, it is necessary that the left leg shouldn't be cut off either, in the event of a second (theft)." Because we (the Ahnaaf) say: "The leg is not intended in the Aayah, so there is no harm for it being established through a different *nass* (referring to the Hadeeth quoted earlier, wherein "cutting off" is mentioned four times.)"

واليد لما كانت متعرضة بها في الآية وتعين اليمنى مراداً منها لا يجوز أن تثبت اليسرى بخبر الواحد الذي لا تجوز الزيادة به على الكتاب, لأنه لم يبق المحل المعين الذي تعين بالإجماع

The hand is intended in the Aayah, and the right hand has specifically been meant; thus; it is not permissible to established (the cutting off) of the left hand on the basis of a *khabr-e-waahid* (solitary narration), because a *khabr-e-*

waahid cannot be used to add onto (an Aayah of) the Kitaab (Qur'aan), because (after the right hand has been cut off) there no longer remains the defined place which has been defined by *ijmaa`* (for cutting off in the case of theft, which is the right hand)."

بخلاف الجلد فإنه كلما يزني غير المحصن يجلد لأن البدن صالح للجلد دائماً

ولما فرغ المصنف رحمه الله عن بيان التكرار وعدمه شرع في تقسيم الوجوب فقال:

This is contrary to the issue of flogging, because, every time a non-married individual commits *zinaa*, he gets flogged, because the body is always capable of being flogged.

After the author **رحمة الله عليه** ended the explanation of *takraar* (repetition) and its absence, he now starts (a new discussion on) the division of *wujoob* (obligation), so he says:

أحكام الأمر

The Laws of Amr (Command)

(وحكم الأمر نوعان: أداء وهو تسليم عين الواجب بالأمر)

يعني ما ثبت بالأمر وهو الوجوب نوعان: وجوب أداء ووجوب قضاء

The author says: "The ruling of amr is two types: *adaa*, which is submitting the actual *waajib* (which has been made obligatory) by the amr (command)."

Meaning, what is established by *amr* (command), which is *wujoob* (obligation), falls into two types: the *wujoob* of *adaa* (discharging within the appointed time)) and the *wujoob* of *qadhaa* (discharging after the expiry of the appointed time).

ف<الأداء>: هو تسليم عين ما وجب في الذمة بالأمر. يعني إخراجه من العدم إلى الوجود في الوقت المعين له

So *adaa* refers to submitting (i.e. carrying out) the very thing which has been obligated by *amr* (command) in terms of responsibility, i.e. taking it out from non-existence into existence, in the time appointed for doing so.

وهذا هو معنى التسليم, وإلا فالأفعال أعراض لا يتصور تسليمها بالأمر

وقد ذكر في أصول فخر الإسلام وغيره <تسليم نفس الواجب بالأمر> فاعترض عليه بأن نفس الوجوب لا يكون بالأمر بل بالوقت. أجيب بأن قوله <بالأمر> متعلق <بالتسليم> لا بالواجب, ولهذا بدل المصنف رحمه الله قوله <نفس الواجب> بقوله <عين الواجب> ليعلم أن نفس الواجب أو عينه كناية عن إتيانه في الوقت, فلا حاجة إلى زيادة قوله <في وقته> كما زاد البعض

وكذا إلى قوله <إلى مستحقه> لأن قوله <بالأمر> يدل على أن الأمر هو المستحق

This is the meaning of *tasleem* (submission, carrying out); otherwise, actions are submissions, and their submission cannot be imagined with an *amr*.

It has been mentioned in the *Usool* of Fakhr-ul-Islaam (i.e. Imaam al-Bazdawi) and other than him that, "Submitting the actual (thing) made *waajib* by the *amr*." This has been objected to by saying, the actual thing that is *waajib* is not (connected) with the command but rather, with a (certain) time. It is responded to by saying, his saying "with the *amr* (command)" is connected to "with submission (carrying out)", not with the *waajib* (obligation). For this reason, the author replaced his words "*nafs al-waajib*" (the *waajib* itself) with the words "*`ain al-waajib*" (the specific thing that is *waajib*), so that it may be known that "*nafs al-waajib*" or "*`ain al-waajib*" is a metaphor referring to carrying it out in its (appointed) time, and thus there is no need for adding the words "in its time", as some have added. Similarly, there is no need to add "to its rightful one" because his saying, "with the command" already points out that the *amr* is the thing that is rightful (to be done).

(وقضاء: وهو تسليم مثل الواجب به)

عطف على قوله: <أداء> بمعنى وجوب قضاء: وهو تسليم مثل الواجب بالأمر لا عينه, أي تسليم مثل ذلك الواجب الذي وجب أولاً في غير ذلك الوقت. وكان ينبغي أن يقيده بقوله <من عنده> ليخرج أداء ظهر اليوم قضاءً عن ظهر أمسه, لأنه ليس من عنده بل كلاهما لله تعالى

The author says: "And (the second type) is *qadhaa*, which is: submitting (or carrying out) a likeness of what which is *waajib*."

This is coupled to his statement, "*adaa*", i.e the *wujoob* of *qadhaa*, which is: submitting something which is a likeness of that which had been made *waajib* (obligatory) by the *amr* (command), not the very thing (that was *waajib*) itself. Meaning, carrying out a likeness of that *waajib* which had been *waajib* originally, (but submitting this likeness) in other than that time. It was necessary for him to restrict it with his saying, "from himself," so that the discharging of the Zhuhr of today (for example) may be excluded from being a *qadhaa* of the Zhuhr of yesterday, because it is not from it, but rather, both of them are for Allaah Ta`aalaa.

والقضاء إنما هو صرف النفل الذي كان حقاً له إلى القضاء الذي كان عليه, وإنما لم يقيده به لشهرة أمره وكونه مدلولاً عليه بالإلتزام. وأما النفل فإنما يقضى إذا لزم بالشروع, وحينئذ لم يبق نفلاً بل صار واجباً, ولكنه يؤدى مع أنه ليس بواجب.

فينبغي أن يراد بقوله <عين الواجب> الثاتب, ليعم النفل. هكذا قيل, وفيه وجوه أخر

(ويستعمل أحدهما مكان الآخر مجازاً حتى يجوز الأداء بنية القضاء وبالعكس)

أي يستعمل كل من الأداء والقضاء مكان الآخر بطريق المجاز, حتى يجوز الأداء بنية القضاء بأن يقول: <نويت أن أقضي ظهر اليوم>, ويجوز القضاء بنية الأداء بأن يقول: <نويت أن أؤدي ظهر الامس>

Qadhaa is changing a *nafl* (voluntary) which was rightful for him into the *qadhaa* which was due upon him. He (the author) did not restrict it with that because of how well-known it is and because it is the purport as known by necessity. As for the *nafl*, it only gets repeated (i.e. *qadhaa* is done of it) if it has become binding on account of commencement (i.e. when a person commences a *nafl* Salaah, for example, it now becomes binding on him, so if it breaks, he must repeat it.) Then, it no longer remains *nafl* but rather, it becomes *waajib*, but it is discharged even though it is not *waajib*.

Thus, it is necessary that the intended meaning of his statement, "*`ain al-waajib*" (the specific thing made *waajib*) mean that which is affirmed, so that it may encompass that which is *nafl* (voluntary) as well.

The author says: "Sometimes, one of them (i.e. *adaa* and *qadhaa*) is used in place of the other, by way of metaphor, so much so that it is permissible to discharge (something) despite having made the *niyyat* of *qadhaa*, and vice-versa."

Meaning, both *adaa* and *qadhaa* are sometimes used in place of each other (terminology), by way of metaphor, so much so that, *adaa* can be done with the *niyyat* of *qadhaa*, such as by him saying, "I intend to make *qadhaa* of the Zhuhr of today." It is also permissible to made *qadhaa* with the *niyyat* of *adaa*, such as by him saying, "I intend to perform (discharge) the Zhuhr of yesterday."

واستعمال القضاء في الأداء كثير كقوله تعالى:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوْا فِيْ الْأَرْضِ

أي إذا أديت صلاة الجمعة, لأن الجمعة لا تقضى

ولذا ذهب فخر الإسلام إلى أن القضاء عام يستعمل في الأداء والقضاء جميعاً, لأنه عبارة عن فراغ الذمة وهو يحصل بهما فكان في معنى الحقيقة بخلاف الأداء فإنه ينبئ عن شدة الرعاية وهو ليس إلا في الأداء كما قال الشاعر:

الذئب يأدو للغزال يأكله

أي يختله ويغلب عليه

وأما إذا صام شعبان بظن أنه من رمضان فلا يجوز لأنه أداء قبل السبب وإن صام شوال بظن أنه من رمضان يجوز لا لأنه قضاء بنية الأداء بل لأنه أداء بنية القضاء وإنما الخطأ في ظنه وهو معفو

ثم إنهم إختلفوا فيما بينهم إن سبب القضاء هو الذي كان سبباً للأداء, أم لابد من سبب على حدة؟ فبينه المصنف رحمه الله بقوله:

(والقضاء يجب بما يجب به الأداء عند المحققين خلافاً للبعض)

Many times, *qadhaa* is used in the meaning of *adaa*, like in the Aayah:

{"*So when the Salaah is completed (qudhiyat), then spread out in the land...*"}

Meaning, when the Salaat of Jumu`ah is complete, because there is no *qadhaa* of Jumu`ah (thus, though the word-form of *qadhaa* is used in the Aayah, it is used in the meaning of *adaa*).

For this reason, Fakhr-ul-Islaam (Imaam al-Bazdawi) held the view that *qadhaa* is *`aam* (general), encompassing both *adaa* and *qadhaa*, because it is a term used to refer to discharging one's responsibility, and that is achieved through both (*adaa* and *qadhaa*), so it is in the literal meaning different to *adaa*, because it (*adaa*) informs of (i.e. conveys the meaning of) great caution and care being taken (in fulfillment), and this is not (found) except in *adaa* (i.e. because in *qadhaa*, it is being carried out after the expiry of the appointed time, so of course this person had not taken "great care and consideration", hence it is different to the literal connotation of *adaa*.)

Like the poet says:

"*The wolf deceives the gazelle, so that he can eat it.*"

(The word used here, "*ya'doo*", is from *adaa*, and here the literal connotation is being meant, which is that of taking great care, caution, consideration. So, the wolf exercises great caution and care with regards to the gazelle, when hunting it, to eat it.)

Meaning, it deceives it and overpowers it.

If a person fasts in Sha`baan thinking it to be from Ramadhaan, it is not permissible because that would be *adaa* of something before the *sabab* (cause) has come about. However, if a person fasts in Shawwaal thinking it to be Ramadhaan, it is permissible, not because it is *qadhaa* with the *niyyah* of *adaa*, but because it is *adaa* with the *niyyah* of *qadhaa*. The error is in his thinking, and he is excused.

Thereafter, they differed among themselves regarding whether the *sabab* of *qadhaa* is the same thing that was the *sabab* of *adaa*, or is there a need that it has a separate *sabab*? The author رحمة الله عليه clarifies that by saying:

"*Qadhaa* becomes *waajib* by the very same thing that makes *adaa waajib*, according to the verifiers, contrary to the opinion of some."

أي القضاء يجب بالسبب الذي يجب به الأداء عند المحققين من عامة الحنفية, خلافاً للعراقيين من مشايخنا, وعامة أصحاب الشافعي فإنهم يقولون: لابد للقضاء من سبب جديد سوى سبب الأداء. والمراد بهذا السبب النص الموجب للأداء, لا السبب المعروف أعنى الوقت

وحاصل الخلاف يرجع إلى أن عندنا النص الموجب للأداء وهو قوله تعالى:

أَقِيْمُوا الصَّلَاةَ

وقوله تعالى:

كُتِبَ عَلَيْكُمُ الصِّيَامُ

دال بعينه على وجوب القضاء, لا حاجة إلى نص جديد يوجب القضاء, وهو قوله عليه الصلاة والسلام:

مَنْ نَامَ عَنْ صَلَاةٍ أَوْ نَسِيَهَا فَلْيُصَلِّهَا إِذَا ذَكَرَهَا فَإِنَّ ذَلِكَ وَقْتُهَا

وقوله تعالى:

فَمَنْ كَانَ مِنْكُمْ مَرِيْضاً أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِّنْ أَيَّامٍ أُخَرَ

بل إنما وردا للتنبيه على أن الأداء باق في ذمتكم بالنصين السابقين لم يسقط بالفوات

Meaning, *qadhaa* becomes *waajib* by the same *sabab* which had made *adaa waajib*, according to the verifiers from the majority of the Hanafiyyah, contrary to the Iraqis from our Mashaayikh.

The majority of the companions of Imaam ash-Shaafi`ee say, "There is a need for *qadhaa* to have a new *sabab* other than the *sabab* of *adaa*." The meaning of this *sabab* is the *nass* (clear text) which made *adaa waajib*, not the well-known *sabab*, which is *waqt* (time).

The summary of the disagreement goes to the issue that according to us (Ahnaaf), the *nass* (clear text) which makes *adaa waajib*, which is the Aayah:

{"*Establish Salaah...*"}

And the Aayah:

{"*Fasting has been prescribed upon you...*"}

Point out specifically to the *wujoob* (obligation) of *qadhaa* (as well), leaving no need for a new nass that necessitates *qadhaa*, and that is the Hadeeth:

"Whoever oversleeps for a Salaah or forgets it, he must perform it when he remembers it, for that is its *waqt* (time)."

And the Aayah:

{"*Whosoever among you is sick or on a journey, the same number (of days which one did not fast must be made up) from other days...*"}

Rather, they (that Aayah and Hadeeth) are there for *tanbeeh* (warning and to draw attention to the fact that) the *adaa* still remains a responsibility upon you, by the two *nass* (clear texts) which preceded, and (the obligation) has not fallen away on account of missing (them).

لأن بقاء الصلاة والصوم في نفسه للقدرة على مثل من عنده, وسقوط فضل الوقت لا إلى مثل وضمان للعجز عنه أمر معقول في نفسه فعدينا حكم القضاء إلى ما لم يرد فيه نص وهو المنذور من الصلاة والصيام والإعتكاف

وعند الشافعي رحمه الله لابد للقضاء من نص جديد موجب له سوى نص الأداء, فقضاء الصلاة والصوم عنده لابد أن يكون بقوله عليه الصلاة والسلام:

مَنْ نَامَ عَنْ صَلَاةٍ أَوْ نَسِيَهَا فَلْيُصَلِّهَا إِذَا ذَكَرَهَا فَإِنَّ ذَلِكَ وَقْتُهَا

وقوله تعالى:

فَمَنْ كَانَ مِنْكُمْ مَرِيْضاً أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِّنْ أَيَّامٍ أُخَرَ

Because, Salaah and Sawm (fasting) remaining (obligatory upon him) is because he is the ability to (carry out) the like of it. That there is no likeness and compensation for missing out the virtuous (i.e. appointed) time, because

it is not possible to do so, is a matter understood by the intellect. We count the ruling of *qadhaa* from those matters in which there has come no *nass* (clear text), but it is vowed, from Salaah, fasting and I`tikaaf.

According to Imaam ash-Shaafi`ee رحمة الله عليه, it is necessary that *qadhaa* should have a new *nass* (clear text) which makes it *waajib* (obligatory) other than the *nass* for *adaa*. Thus, according to him, *qadhaa* of Salaah and fasting is based on the Hadeeth:

"Whosoever oversleeps for a Salaah or forgets it, he must perform it when he remembers it, for that is its *waqt* (time)."

And the Aayah:

{"*Whosoever among you is sick or on a journey, the same number (of days which one did not fast must be made up) from other days...*"}

وما لم يرد النص فيه إنما يثبت القضاء بسبب التفويت الذي يقوم مقام نص القضاء, فلا تظهر ثمرة الخلاف بيننا وبينه إلا في الفوات فعندنا يجبر القضاء في الفوات وعنده لا

وقيل: الفوات أيضاً قائم مقام النص كالتفويت فلا تظهر ثمرة الخلاف إلا في التخريج فعندنا يجب في الكل بالنص السابق, وعنده يجب بالنص الجديد أو بالفوت والتفويت

وقضاء الحضر في السفر أربع ركعات, وقضاء السفر في الحضر ركعتين, وقضاء الجهر في النهار جهراً وقضاء السر في الليل سراً يؤيد ما ذكرنا

وقضاء الصحيح صلاة المرض بعنوان الصحة, وقضاء المريض صلاة الصحة بعنوان المرض يؤيد ما ذكره

Because there is no *nass* concerning it, *qadhaa* is established on account of *tafweet* (neglecting the appointed time until it expires), and this takes the place of (specific) *nass* for *qadhaa*. The fruits of the difference between us (Ahnaaf) and him (Imaam ash-Shaafi`ee) does not appear except in the issue of *fawaat* (expiration of the appointed time); according to us, in the case of *fawaat* (expiration of the appointed time), *qadhaa* compensates for it, whilst according to him, it does not.

It is also said: *Fawaat* (expiration of the appointed time) takes the place of *nass*, as *tafweet* (missing the appointed time on account of neglect), so the fruits of the difference do not arise except when it comes to deriving (rulings). According to us, it is *waajib* in all (circumstances), on the basis of the previous *nass* (clear text). According to him, it is *waajib* on the basis of new *nass*, or with expiration of the time or *tafweet*.

Qadhaa on a journey of Salaah missed whilst at home (will be) four *raka`aat*. *Qadhaa* whilst at home of Salaah missed during a journey (will be) two *raka`aat*. *Qadhaa* of an audible Salaah during the day will be audible. Qadhaa of a silent Salaah during the night will be silent and this strenghtens what we had mentioned.

The healthy person performing *qadhaa* missed during sickness in the form of the Salaah of a health person (i.e. standing, not sitting), and the sick person performing *qadhaa* of Salaah missed during health in the form of the Salaah of a sick person (i.e. sitting, or laying, even though the Salaats being made *qadhaa* of, at that time he had still been healthy,) this strengthens what he (Imaam ash-Shaafi`ee) said.

ثم هاهنا سؤال مشهور لهم علينا وهو أنه إن نذر أحد أن يعتكف شهر رمضان فصام ولم يعتكف لمرض منعه من الإعتكاف لا يقضي إعتكافه في رمضان آخر بل يقضيه في ضمن صوم مقصود وهو صوم النفل, ولو كان القضاء واجباً بالسبب الذي أوجب الأداء وهو قوله تعالى:

وَلْيُوْفُوْا نُذُوْرَهُمْ

لوجب أن يصح القضاء في الرمضان الثاني كما صح الأداء في الرمضان الاول كما هو مذهب زفر رحمه الله, أو يسقط القضاء أصلاً لعدم إمكان الصوم الذي هو شرطه كما هو مذهب أبي يوسف رحمه الله

Thereafter, there is a well-known question which they pose to us, and that is: if a person takes a vow that he will perform I`tikaaf for the duration of the month of Ramadhaan, but then he fasts and does not perform I`tikaaf on account of a sickness which prevents him from doing so, he will not make *qadhaa* of that I`tikaaf in the following year's Ramadhaan, but rather, he will perform the *qadhaa* (of that I`tikaaf) during an intended fast, which is a *nafl* (optional) fast. Now, if *qadhaa* becomes *waajib* on account of the very same *sabab* that had made *adaa waajib*, which is the Aayah:

{"*Let them fulfill their oaths...*"}

Then, it would have been necessary that performing *qadhaa* (of the I`tikaaf) during the following year's Ramadhaan should be valid, just as how *adaa* (of it) during the first Ramadhaan was valid, as is the Madh-hab of Imaam Zufar رحمة الله عليه, or that the *qadhaa* falls away entirely on account of the inability to fast which is its *shart* (condition), as is the Madh-hab of Imaam Abu Yusuf رحمة الله عليه.

فعلم أن سبب القضاء التفويت, والتفويت مطلق عن الوقت فينصرف إلى الكامل وهو الصوم المقصود, فأجاب المصنف عنه بقوله:

(وفيما إذا نذر أن يعتكف شهر رمضان فصام ولم يعتكف إنما وجب القضاء بصوم مقصود لعود شرطه إلى الكمال, لا لأن القضاء وجب بسبب آخر)

يعني في صورة نذر أن يعتكف هذا الرمضان المعهود فصام ولم يعتكف لمانع مرض إنما وجب القضاء بصوم مقصود وهو النفل لعود شرط الإعتكاف إلى الكمال وهو صوم النفل لا لأن القضاء وجب بسبب آخر كما زعمتم

وتقريره: إن الإعتكاف لا يصح إلى بالصوم فإذا نذر بالإعتكاف فقد نذر بالصوم فكان ينبغي أن يجب الصوم المقصود إبتداءاً بمجرد نذر الإعتكاف ولكن شرف الرمضان الحاضر عارضه, لأن العبادة في رمضان أفضل نم العبادة في غيره فانتقلنا من الصوم الأصلي المقصود إلى صوم رمضان لهذا الشرف العارض

ولما فات شرف رمضان عاد الصوم إلى كماله وهو الصوم المقصود الأصلي أعني صوم النفل, فكأنه صدر حكم من الله تعالى أن صوموا النفل واعتكفوا فيه

والحياة إلى الرمضان الثاني موهوم, لأنه وقت مديد يستوي فيه الحياة والممات

Thus, it becomes known that the *sabab* (cause) behind *qadhaa* is *tafweet* (deliberate neglecting of the time until it expires), and *tafweet* is unrestricted from time, so it transfers to completion and that is an intended fast. So, the author responds to that by saying:

"As for the case of a person vowing to perform I`tikaaf for the duration of the month of Ramadhaan, but he fasts and does not perform I`tikaaf, then it becomes *waajib* upon him to perform *qadhaa* through an intended fast, for that causes the return of the *shart* (for I`tikaaf) to it, making it complete, not because *qadhaa* becomes *waajib* for a different *sabab* (cause)."

Meaning, in the scenario of a person vowing to make I`tikaaf this coming Ramadhaan, but then he does not do so become of some illness preventing him, *qadhaa* becomes *waajib* with an intended fast - which is a *nafl* fast - because that brings back the *shart* (condition) for (the validity of) I`tikaaf being complete, which is a *nafl* fast, not because *qadhaa* becomes *waajib* for a different *sabab* (clause) as you claim.

The explanation of this is that, I`tikaaf is invalid unless it is accompanied by fasting. So, if a person vows to perform I`tikaaf then he has vowed to fast; thus, it is necessary that first an intended fast becomes *waajib* upon him, simply by having intended to perform I`tikaaf, but the honour of the present Ramadhaan opposes it, because `Ibaadah performed during Ramadhaan is more virtuous than `Ibaadah performed in (any other month), so we move from the original intended fast to the fast of Ramadhaan, because of this opposing honour. Because he missed out the honour of Ramadhaan, the fast returns to its complete state, and that is the original, intended fast, meaning, a *nafl* (optional) fast, so it is as though a Command has come from Allaah Ta`aalaa saying, "Fast a *nafl* (fast) and perform I`tikaaf therein."

Life until the second Ramadhaan is doubtful (i.e. unknown whether the person will live that long), because it is a long time, and the possibility of living or dying (before then) is equal (in likelihood).

ثم إذا لم يصم صوماً مقصوداً وجاء الرمضان الثاني لم ينتقل حكم الله تعالى إلى هذا الرمضان الثاني

وإنما قال: <فصام ولم يعتكف> لأنه إذا لم يصم لمرض منع من الصوم فحينئذ يجوز الإعتكاف في قضاء رمضان البتة

ثم شرع المصنف في بيان تقسيم الأداء والقضاء إلى أنواعهما فقال:

(والأداء أنواع, كامل وقاصر وما هو شبيه بالقضاء)

وفي هذا التقسيم مسامحة, لأن الأقسام لا تقابل فيما بينهم, وينبغي أن يقول: والأداء أنواع: أداء محض وهو نوعان كامل وقاصر, وأداء هو شبيه بالقضاء

ويعني بالأداء المحض ما لا يكون فيه شبه بالقضاء بوجه من الوجوه لا من حيث تغير الوقت ولا من حيث التزامه

ويعني بالشبيه بالقضاء ما فيه شبه به من حيث إلتزامه, ويعني بالكامل ما يؤدى على الوجه الذي شرع عليه, وبالقاصر ما هو خلافه

(كالصلاة بجماعة)

مثال للأداء الكامل, فإنه أداء على حسب ما شرع, فإن الصلاة ما شرعت إلا بجماعة, لأن جبريل عليه السلام علّم الرسول عليه الصلاة والسلام بالجماعة في يومين

(والصلاة منفرداً)

مثال للأداء القاصر, فإنه أداء على خلاف ما شرع عليه, ولهذا يسقط وجوب الجهر في الجهرية عن المنفرد

But, if the person does not perform an intended fast (i.e. a *nafl* fast), and then the second Ramadhaan arrives, the Ruling of Allaah Ta`aalaa will not transfer to this second Ramadhaan.

He said, "So he fasts but does not perform I`tikaaf", because, if he does not fast on account of some preventative sickness, then in that case, it is permissible to made *qadhaa* of the I`tikaaf in (another) Ramadhaan altogether.

Thereafter, the author becomes explaining the types of *adaa* and *qadhaa*, so he says:

"*Adaa* is of different types:

1) *Kaamil* (complete).
2) *Qaasir* (deficient).

3) *Shabeeh bil-Qadhaa* (resembling *qadhaa*)."

There is some laxity in this division (by the author), because the types (of *adaa*) are not equal among themselves, so he should have said: "*Adaa* is of (different) types: pure *adaa*, which is two types: *kaamil* (complete) and *qaasir* (deficient), and another (type of) *adaa* which is *shabeeh bil-qadhaa* (similar to *qadhaa*)."

The meaning of pure *adaa* is that *adaa* (discharge) in which there is no resemblance to *qadhaa* whatsoever, neither from the aspect of the changing of time nor from the aspect of the ramifications. The meaning of *shabeeh bil-qadhaa* is that form of *adaa* in which there is a resemblance to *qadhaa* from the aspect of its ramifications and necessitation. The meaning of (*adaa*) *kaamil* (complete discharge) is that type of *adaa* which is discharged according to the way it has been legislated in the Sharee`ah, and the meaning of (*adaa*) *qaasir* (deficient discharge) is that type of *adaa* which is not so (i.e. hasn't been discharged in the manner the Sharee`ah has legislated).

The author says: "Like Salaat in Jamaa`ah."

This is an example of *adaa-e-kaamil* (perfect discharging of the duty), because this is *adaa* (discharging of the duty) in the way it has been legislated, because Salaat has only been legislated in Jamaa`ah, because Jibreel **عليه السلام** taught Rasoolullaah **صلى الله عليه وسلم** (the Salaah in the form of) Jamaa`ah on both days.

The author says: "And Salaat performed individually."

This is an example of *adaa-e-qaasir* (deficient discharge), because it is *adaa* in a way contrary to how it was legislated. For this reason, the obligation of *jahr* (audible recitation) falls away (in the case of audible Salaah) for the one (performing *qadhaa*) individually (i.e. even though Fajr, Maghrib, `Ishaa are *jahri* (audible) Salaats, when a person performs them individually as *qadhaa*, he will not recite audibly).

(وفعل اللاحق بعد فراغ الإمام حتى لا يتغير فرضه بنية الإقامة)

مثال للأداء الشبيه بالقضاء

فإن اللاحق هو الذي التزم الأداء مع الإمام من أول التحريمة ثم سبقه الحدث فتوضأ وأتم بقية الصلاة بعد فراغ الإمام

فإن هذا الإتمام أداء من حيث بقاء الوقت, وشبيه بالقضاء من حيث أنه لم يؤد كما التزم, ولما كان معنى الأداء من حيث الأصل ومعنى القضاء من حيث التبع جعل أداءاً شبيهاً بالقضاء, ولم يجعل قضاءاً شبيهاً بالأداء

وثمرة كونه أداءاً ظاهرة ولهذا لم يتعرض لها, وثمرة كونه شبيهاً بالقضاء هي أنه لا يتغير فرضه حينئذ بنية الإقامة, بأن كان هذا اللاحق مسافراً إقتدى بمسافر ثم أحدث فذهب إلى مصره للتوضئ, أو نوى الإقامة في موضعها ثم جاء حتى فرغ الإمام ولم يتكلم وشرع في إتمام الصلاة فلا يتم أربعاً بل يصلي ركعتين, كما إذا كان قضاءاً محضاً لا يتغير فرضه بنية الإقامة فكذا هذا. فإن لم يقتد بمسافر بل مقيم, أو لم يفرغ الإمام بعد, أو تكلم ثم استأنف أو كان مثل هذا في المسبوق دون اللاحق يصير فرضهم أربعاً بنية الإقامة

ثم إن هذه الأقسام الثلاث كما تجرى في حقوق الله تعالى تجرى في حقوق العباد أيضاً فقال:

The author says: "And the action of the one who catches up to the Imaam after the Imaam has completed (the Salaah), but its (state of being) *fardh* has not changed on account of having the *niyyah* of staying."

This is an example the author is giving of *shabeeh bil-qadhaa* (a discharging that resembles *qadhaa*).

The *laahiq* (one who catches up) mentioned here by the author is the one who begins the Salaah with the Imaam from the *takbeer-e-tahreemah*, but then this person's *wudhoo* breaks, so he goes to perform *wudhoo* and then completes the remainder of the Salaat after the completion of the Imaam. This type of *itmaam* (completion), it is *adaa* from the aspect of it being done within the appointed time, but it resembles *qadhaa* from the aspect of it not being discharged in the way it had become binding. Because it has the meaning of *adaa* from the aspect of origin (i.e. starting with the Imaam, in the appointed time) but the meaning of *qadhaa* from the aspect of following (i.e. finishing the remainder after the completion of the Imaam), it was termed *adaa shabeeh bil-qadhaa*, and it was not termed *qadhaa shabeeh bil-adaa* (*qadhaa* resembling *adaa*).

The fruits of it being *adaa* is clear; for this reason, there is no objection to it. The fruits of it being (termed) *shabeeh bil-qadhaa* is that its state as being *fardh* had not changed because he had the intention of remaining (to complete it), such as by this *laahiq* (one who catches up with the Imaam) being a *musaafir* and he is making Salaah behind another musaafir (like himself), and then his *wudhoo* breaks, so he returns to his city to perform *wudhoo*, or he makes intention for *iqaamat* (staying) in that place, then he comes back (from making *wudhoo*) after the Imaam has completed the Salaah, but he didn't speak to anyone (during this time), so he begins making *itmaam* (completion) of the Salaah (that had broken), so he doesn't complete it as four *raka`aat* but rather, he performs only two, like how if it had been a pure *qadhaa*, its state of being *fardh* does not change by the *niyyat* of *iqaamat* (staying), so the same is the case here. But, if he was not performing Salaah behind a *musaafir*, but rather, behind a *muqeem* (resident of that area), or the Imaam had not yet completed the Salaah, or he (the person whose *wudhoo* broke) speaks and then renews (his Salaah), or if this was the case with a *masbooq* (one who catches the Imaam after the first *rukoo`*, or in the first *rukoo`*) and not a *laahiq* (one who had caught *takbeer-e-tahreemah* but during the Salaah his *wudhoo* breaks), then its state of *fardh* changes to four *raka`aat* by the *niyyat* of *iqaamah* (staying).

Thereafter, these three categories, as they continue when it comes to the *Huqooq* (Rights) of Allaah Ta`aalaa, they continue when it comes to the rights of the bondsmen (of Allaah Ta`aalaa), so the author says:

(ومنها رد عين المغصوب)

أي ومن أنواع الأداء رد عين الشيء الذي غصبه على الوصف الذي غصبه إلى المالك بدون أن يكون المغصوب مشغولاً بالجناية أو بالدين, وبدون أن يكون ناقصاً بنقصان حسي. فهذا نظير الأداء الكامل, لأنه أداء على الوصف الذي غصبه من غير فتور, ومثله تسليم عين المبيع إلى المشتري, وتسليم بدل الصرف والمسلم فيه إليه على الوصف الذي وقع عليه العقد

(ورده مشغولاً بالجناية)

نظير للأداء القاصر, أي رد الشيء المغصوب حال كونه مشغولاً بالجناية أو بالدين بأن غصب عبداً فارغاً من الدين والجناية ثم لحقه الدين أو الجناية في يد الغاصب. ومثله تسليم المبيع حال

كونه مشغولاً بالجناية أو بالدين أو بالمرض, ففي هذا كله إن هلك المغصوب والمبيع في يد المالك والمشتري بآفة سماوية برئت ذمة الغاصب والبائع لكونه أداءاً

ولو دفعه المالك إلى ولي الجناية أو بيع في الدين رجع المالك على الغاصب بالقيمة والمشتري على البائع بالثمن

(وإمهار عبد غيره وتسليمه بعد الشراء)

نظير للأداء الشبيه بالقضاء. أي أمهر رجل عبداً لغير في نكاح امرأته ثم سلمه إليها بعد الشراء فهو أداء من حيث أنه سلم عين العبد الذي وقع عليه العقد وشبيه بالقضاء من حيث أن تبدل الملك يوجب تبدل العين حكماً

The author says: "And from it is returning the item that was looted."

Meaning, from the types of *adaa* (discharging) is (a person) returning the very thing which he had looted, exactly as it had been (at the time of being looted), to the possession (of the original owner), without that looted item having any felonies or debt (such as if what was looted was a slave), and without it having any perceptible faults. This, then, is an example of *adaa-e-kaamil* (perfect discharging), because it is discharging (returning the item) in the same condition in which it had been looted without any weakness. An example of this is handing over the purchased item to the seller, and handing over (the item agreed upon) in a *sarf* (currency exchange) transaction or *muslam feeh* (advanced payment) transaction, in the manner agreed upon in the contract.

The author says: "And returning it burdened with a felony."

This is an example of *adaa-e-qaasir* (deficient discharge), i.e. a person returns the looted item (in this case, a slave) in the condition that now it has a felony or debt, such as by having looted a slave (from the master) who had no debt or felony, and then, whilst the slave was in the possession of the looter, it acquired a debt or felony, An example of it is handing over the purchased item in the state that it has a felony or debt or sickness. In all of these cases, if the looted item (a slave, in this case) or purchased item perishes in the hand of the (original) owner through a heavenly affliction (i.e. an affliction sent down by Allaah Ta`aalaa), then the looter and the seller are exempt from responsibility, because it is *adaa*.

If the (original) owner gives it to the person owning the felony (i.e. the person whom the felony was committed against), or a sale in debt, then the original owner gets the value back from the looter and the buyer gets a refund from the seller.

The author says: "And granting *mahr* to a slave of another, and handing him over after purchasing."

This is an example of *adaa shabeeh bil-qadhaa* (resembling *qadhaa*). Meaning, if a man gives *mahr* to a slave of another in order to marry his wife, and then he gives him to her after the purchasing, then it is *adaa* from the aspect of him having handed over the slave agreed upon in the contract, and it is *shabeeh bil-qadhaa* from the fact that a change in ownership necessitates a change in the actual item, legally.

فإذا كان العبد مملوكاً للمالك كان شخصاً آخر, ثم إذا اشتراه الزوج كان شخصاً آخر, وإذا سلمه إليها كان شخصاً آخر. والحجة في هذا الباب أن رسول الله صلى الله عليه وسلم دخل على بريرة يوماً فقدمت إليه تمراً, وكان القدر يغلي من اللحم, فقال عليه الصلاة والسلام:

أَلَا تَجْعَلِيْنَ لَنَا نَصِيْباً مِّنَ اللَحْمِ؟ فَقَالَتْ: يَا رَسُوْلَ اللهِ! إِنَّهُ لَحْمٌ تُصَدَّقُ عَلَيَّ, فَقَالَ عليه الصلاة والسلام: لَكِ صَدَقَةٌ وَلَنَا هَدِيَّةٌ

يعني إذا أخذته من المالك كان صدقة عليك, وإذا أعطيته إيانا تصير هدية لنا. فعلم أن تبدل الملك يوجل تبدلاً في العين, وعلى هذا يخرج كثير من المسائل, (حتى تجبر على القبول) تفريع على كونه أداءاً

أي تجبر المرأة على قبول ذلك العبد الممهور بعد التسليم, وهو من علامة كونه أداءاً. وهذا بخلاف ما إذا باع عبداً واستحق العبد ثم اشتراه البائع من المستحق حيث لا يجبر على تسليمه إلى المشتري, لأنه بالإستحقاق ظهر أن البيع كان موقوفاً على إجازة المالك, فإذا لم يجزه بطل وانفسخ بخلاف النكاح فإنه لا ينفسخ باستحقاق المهر ولا بانعدامه

So if the slave was owned by the owner, it is a different person. If he (the slave) was purchased by the husband, he is a different person. When he hands him over to her, he is a different person. The proof in this issue is that Rasoolullaah **صلى الله عليه وسلم** once visited Hadhrat Bareerah **رضي الله عنها**, so

she presented some dates, but meat was cooking in the pot. Rasoolullaah صلى الله عليه وسلم asked her, "Won't you give us a portion of the meat?" She said: "Yaa Rasoolallaah, it is meat that was given to me as *sadaqah* (charity)." So Rasoolullaah صلى الله عليه وسلم said, "For you it is *sadaqah*, but for us it is a gift."

Meaning, when you take it from the owner, it is *sadaqah* (charity) for you, and when you give it to us, it becomes a gift for us. Thus, it is known (from this) that a change in ownership necessitates a change in the item itself (or individual himself/herself). Based on this, many rulings are derived. The author says:

"So much so that, she is forced to accept."

This is a branching off from the issue of it being *adaa*. What he means is that, the woman is forced to accept that slave that was given *mahr*, after the handing over. This is from the sign of it being *adaa*. This is contrary to the case where a person sells a slave and another person becomes entitled to the slave, and now the original seller purchases it back from the entitled one (who now owns the slave), because he (the entitled one) is not forced to hand it over to the buyer, because, by *istihqaaq* (entitlement), it is clear that the (validity) of the sale is hinged upon the permission of the owner. If he does not permit it, it is invalid and dissolves, contrary to *nikaah* (marriage), because there, it does not dissolve by the entitlement of *mahr* (dowry) or by its absence.

(وينفذ إعتاقه فيه دون إعتاقها)

تفريع على كونه شبيهاً بالقضاء. يعني ينفذ إعتاق الزوج إياه قبل تسليمه إلى المرأة دون إعتاق المرأة, لأن المرأة لا تملكه إلا إذا سلم إليها, فقبل التسليم هو ملك زوج كما أن قبل الشراء كان ملكاً للغير

ولما كانت ذات العبد موجودة في كلا الحالين, ووصف المملوكية متغير فيهما جعل أداءاً شبيهاً بالقضاء, ولم يجعل قضاءاً شبيهاً بالأداء رعاية لجانب الذات والأصل

:ولما فرغ عن بيان أنواع الأداء شرع في تقسيم القضاء فقال

(والقضاء أنواع أيضاً, بمثل معقول, وبمثل غير معقول, وما هو في معنى الأداء)

وفي هذا التقسيم أيضاً مسامحة, وكأنه قيل: والقضاء أنواع:

قضاء محض: وهو إما بمثل معقول أو بمثل غير معقول
وقضاء في معنى الأداء

و يعني بالقضاء المحض ما لا يكون فيه معنى الأداء أصلاً لا حقيقة ولا حكماً وبما هو في معنى الأداء أن يكون خلافه

والمراد بالمثل المعقول: أن تدرك مماثلته بالعقل قطع النظر عن الشرع, وبغير المعقول أن لا تدرك المماثلة إلا شرعاً, ويكون العقل قاصراً عن درك كيفيته, لا أن العقل يناقضه

The author says:

"And his freeing (of the slave) will be carried out (i.e. valid) but not hers."

This is another branching off with regards to the issue of it being *shabeeh bil-qadhaa* (resembling *qadhaa*), and what he means is that, if the husband frees the slave before handing him over to the woman, it is carried out (i.e. it is valid) but not so if the woman frees him, and the reason behind this is that the woman does not possess him except after he is handed over to her. Prior to the handing over, he is in the possession of the husband, just as how prior to a purchase being made, the item is in the possession of another (i.e. the seller).

Because the being of the slave is present in both cases, and the description of slavery is different in both cases, it is counted as *adaa shabeeh bil-qadhaa*, and it is not counted as *qadhaa shabeeh bil-adaa*, on account of taking into consideration the being and origin.

After the author completed the explanation of the types of *adaa*, he now begins the division of the types of *qadhaa*, so he says:

"*Qadhaa* is of different types, with a likeness that can be understood by the intellect and with a likeness that cannot be understood by the intellect, and (another type) that is in the meaning of *adaa*."

There is laxity in this division as well, and it is as though it was said: "*Qadhaa* is of different types:

1) Pure *qadhaa*, and that is either with a likeness that can be understood by the intellect or by a likeness that cannot be understood by the intellect.
2) *Qadhaa* that is in the meaning of *adaa*."

What he means by pure *qadhaa* is that *qadhaa* which is not in the meaning of *adaa* originally, not literally/physically and not legally, and that (*qadhaa*) which is in the meaning of *adaa* is the opposite of it.

The meaning of a likeness that can be understood by the intellect is that its similarity can be understood by the intellect without looking towards the Sharee`ah, and the meaning of a likeness that cannot be understood by the intellect is that likeness, the similarity of which can only be understood from the Sharee`ah and the intellect is incapable of comprehending its modality, not that the intellect contradicts it.

هذا القضاء لابد فيه من سبب جديد بالإتفاق, وإنما الخلاف في القضاء بمثل معقول

(كالصوم للصوم)

وهذا نظير للقضاء بمثل معقول, أي كقضاء الصوم للصوم فإنه أمر معقول, لأن الواجب لا يسقط عن الذمة إلا بالأداء, أو بإسقاط صاحب الحق, وما لم يوجد أحدهما يبقى في ذمته

(والفدية له)

هذا نظير للقضاء بمثل غير معقول, فإن الفدية بمقابلة الصوم لا يدركه عقل, إذ لا مماثلة بينهما صورة وهو ظاهر, ولا معنىً, لأن الصوم تجويع النفس والفدية إشباع

وهذه الفدية لكل يوم هو نصف صاع من بر, أو دقيقة أو سويقة, أو زبيب, أو صاع من تمر, أو شعير للشيخ الفاني الذي يعجز عن الصوم لأجل قوله تعالى:

وَعَلَى الَّذِيْنَ يُطِيْقُوْنَهُ فِدْيَةٌ طَعَامُ مِسْكِيْنٍ

على أن تكون كلمة <لا> مقدرة, أي لا يطيقونه, أو تكون الهمزة فيه للسلب أي يسلبون الطاقة ليدل على الشيخ الفاني

وأما إذا حملت على ظاهرها فهي منسوخة على ما قيل: إن في بدء الإسلام كان المطيق مخيراً بين أن يصوم وبين أن يفدي, ثم نسخ بدرجات على ما حررته في التفسير الأحمدي

This qadhaa requires a new *sabab* (cause), according to consensus. The difference of opinion is only in the issue of a likeness that is not understood by the intellect.

The author says: "Like (*qadhaa*) of fasting (i.e. a missed fast) with fasting."

This is an example of *qadhaa* that has a likeness that is intellectually understood, i.e. like *qadhaa* of a missed fast by fasting. This is a matter understood by the intellect, because the *waajib* (obligation) does not fall away from the responsibility of the person except with *adaa* (discharging), or by the falling away of the person possessing the right, and as long as either of the two is not found, it remains in his responsibility.

The author says: "And giving *fidyah* (monetary compensation) for it."

This is an example of *qadhaa* with a likeness which cannot be understood by the intellect, because *fidyah* is opposite to fasting; the intellect does not comprehend it, because physically there is no similarity between the two (acts), from the apparent, because *sawm* (fasting) is about starving the nafs whereas *fidyah* is about satiating. And this *fidyah* is, for each day (that was missed), half a *saa`* of wheat, or flour, or fine flour, or raisins, or a *saa`* of dates, or barley for the very old man who is incapable of fasting, because of the Aayah:

{"*And upon those who are capable of it, (there is) fidyah; the (feeding) of a miskeen (poor person)...*"}

Based on the fact that the word "*laa*" (not) is hidden (in this Aayah), i.e. "upon those who are not capable of (fasting), or that the *hamzah* in it is for the meaning of "snatching", i.e. snatches away the ability, to point out to the very old man. As for if it is carried upon the literal, then it is *mansookh* (abrogated) according to what has been said: in the beginning of Islaam, a person capable of fasting was given the choice between either fasting of

giving *fidyah*, and thereafter it was abrogated in stages, as I have written in *at-Tafseer al-Ahmadi*.

(وقضاء تكبيرات العيد في الركوع)

هذا نظير للقضاء الذي هو شبيه بالأداء. يعني أن من أدرك الإمام في صلاة العيد في الركوع وفاتت عنه التكبيرات الواجبة, فإنه يكبر في الركوع عندنا من غير رفع يد, لأن الركوع فرض والتكبيرات واجبة فيراعى حالهما على حسب ما يمكن. وأما رفع اليد في التكبيرات ووضعها على الركبتين في الركوع فكلاهما سنة فلا يترك أحدهما بالآخر

وهذا قضاء من حيث الذات لأن محلها القيام قبل الركوع وقد فات, لكنه شبيه بالأداء لأن الركوع يشبه القيام لقيام النصف الأسفل على حاله. ولأن من أدرك الإمام في الركوع فقد أدرك الركعة مع جميع أجزائها من القيام القراءة تقديراً, فالإحتياط أن يؤتى بها فيه. وعند أبي يوسف رحمه الله تعالى لا تقضى هذه التكبيرات في الركوع, لأنه قد فات محلها كما لا تقضى القراءة والقنوت فيه

(ووجوب الفدية في الصلاة للإحتياط)

جواب سؤال مقدر, تقديره:

إن الفدية في الصوم للشيخ الفاني لما كانت ثابتة بنص غير معقول ينبغي أن تقتصروا عليه ولم تقيسوا عليه من مات وعليه صلاة, مع أنكم قلتم: إنه إذا مات وعليه صلاة وأوصى بالفدية يجب على الوارث أن يفدي بعوض كل صلاة ما يفدي لكل صوم على الأصح

فأجاب بأن وجوب الفدية في قضاء الصلاة للإحتياط لا للقياس

The author says: "And making *qadhaa* of the (missed) *takbeeraat* of `Eid during *rukoo`*."

This is an example of *qadhaa* that is *shabeeh bil-adaa*, i.e. the one who catches the Imaam in the Salaat of `Eid in *rukoo`* and thus missed the *waajib takbeeraat*, then he will make up those *takbeeraat* in *rukoo`*, according to us, without raising the hands, because *rukoo`* is *fardh* and the *takbeeraat* are *waajib*,

so the status of each one will be considered according to what is possible. As for the raising of the hands in the *takbeeraat* and the placing of the hands on the knees in *rukoo`*, then both of these are Sunnah, so one will not be left for the sake of the other.

This is *qadhaa* from the aspect of being, because its place is *qiyaam* (standing) before *rukoo`*, and that has already been missed. But, it is *shabeeh bil-adaa* (resembling *adaa*) because *rukoo`* resembles *qiyaam*, because the bottom half (of the person) remains on its state (i.e. standing), and because the one who catches up to the Imaam in *rukoo`* has caught the *rak`ah* with all of its parts, from *qiyaam*, and *qiraa'ah* (recitation), in apportioning, so it is more precautious that he comes with it (i.e. the *takbeeraat* that were missed) in it (the *rukoo`*). According to Imaam Abu Yusuf رحمة الله عليه, there is no *qadhaa* for the missed *takbeeraat* in *rukoo`*, because its place has already been missed, so there is no *qadhaa* for it just as there is no *qadhaa* for the *qunoot* and *qiraa'ah* which was missed.

The author says: "And the obligation of *fidyah* for (missed) Salaah, as a precaution."

This is a response given to a hidden question, which is:

Fidyah, in fasting, for the very old man, because it is established from nass and not understood by the intellect, it is necessary that you restrict yourselves to it and do not make *qiyaas* (analogical deductions) on it regarding the one who dies and upon him there are (missed) Salaats, because you say: "If he dies and there are missed Salaats upon him, and he gives *wasiyyah* (bequest) for *fidyah* (for those missed Salaats), it is *waajib* on the heir to make *fidyah* on behalf of each missed Salaat, according to the most authentic view. So, the author responds by saying that giving *fidyah* for missed Salaats is not done as *qiyaas* of (the issue of giving *fidyah* for missed fasts), but rather, it is done out of precaution.

وذلك لأن نص الصوم يحتمل أن يكون مخصوصاً بالصوم ويحتمل أن يكون معلولاً بعلة عامة توجد في الصلاة – أعني العجز – والصلاة نظير الصوم بل أهم منه في الشأن والرفعة, فأمرنا بالفدية عن جانب الصلاة فإن كفت عنها عند الله تعالى فبها وإلا فله ثواب الصدقة. ولهذا قال محمد في <الزيادات>: تجزئه إن شاء الله تعالى

والمسائل القياسية لا تعلق بالمشيئة قط, كما إذا تطوع به الوارث في قضاء الصوم من غير إيصاء نرجوا القبول منه إن شاء الله, فكذا هذا

(كالتصدق بالقيمة عند فوات أيام التضحة)

أي كوجوب التصدق بقيمة الشاة إن نذرها الفقير, أو اشتراها واستهلكها, أو بعين الشاة إن بقيت حية عند فوات أيام التضحية أيضاً للإحتياط كالفدية للصلاة. فهو تشبيه بالمسألة المتقدمة, وجواب عن سؤال مقدر تقريره: إن ما لا يعقل شرعاً لا يكون له قضاء وخلف عند الفوات, والتضحية أي إراقة الدم في أيام النحر غير معقوله لأنه إتلاف الحيوان فينبغي أن لا يجوز قضاؤها بالتصدق بعين الشاة أو بالقيمة بعد فوات أيامها

فأجاب بأن وجوب التصدق بالقيمة أو بالشاة بعد فوات الأيام للإحتياط لا للقضاء

And that is because the *nass* (clear text) regarding *sawm* (fasting) carries the possibility of being *makhsoos* (exclusive) to fasting and it also carries the possibility of possessing a general *`illah* (reason) which is found in Salaah (as well), i.e. that of incapability. Salaah is on par with fasting; rather, it is greater than it in status. Thus, we commanded the giving of *fidyah* from the side of (missed) Salaah. If it compensates for it by Allaah Ta`aalaa, well and good, and if not, then he (the one who gave the *fidyah*) will still have the reward of *sadaqah* (charity). For this reason, Imaam Muhammad said in *az-Ziyaadaat*: "It will suffice him (for it), *In Shaa Allaahu Ta`aalaa* (if Allaah Ta`aalaa wills)."

Masaa'il based on *qiyaas* are never attached to *Mashee'ah* (Will). Just as, if the heir voluntarily (gives *fidyah*) as *qadhaa* of the (missed fasts of the deceased) without (the deceased) having made any bequest, we hope it will be accepted from him, *In Shaa Allaah*, so it is the same here.

The author says: "Like giving *sadaqah* with the value, in the event of missing the days of slaughter."

Meaning, like the obligation of giving in charity the value of a sheep if a poor person had taken a vow (to slaughter) and thereafter it perishes (before being slaughtered), or by giving a sheep itself if it is still alive after the (appointed) days of slaughtering, as a precautionary measure, the same as giving *fidyah* for (missed) Salaah. So, it resembles the previous *mas'alah*, and it

is an answer given in response to a hidden question, which is: "That which cannot be understood by the intellect, there is no *qadhaa* and substitute for it if it is missed, and slaughtering, i.e. the shedding of blood in the days of *nahr* (sacrifice) is not understood by the intellect, because it is a ruining of the animal; thus, it is appropriate that there be no *qadhaa* for it by means of giving *sadaqah* with the sheep itself or with its value if it (slaughtering) is missed during its (appointed) days."

So, the author responds by saying that the obligation of giving as *sadaqah* the value of the sheep or the sheep itself after missing (slaughtering) in the appointed days is as a precautionary measure, not as *qadhaa*.

وذلك لأن التضحية في أيامها تحتمل أن تكون أصلاً بنفسها وتحتمل أن تكون خلفاً لأن يكون التصدق بعين الشاة أو بقيمتها أصلاً وإنما انتقل إلى التضحية بعارض الضيافة لأن الناس أضياف الله تعالى في هذه الأيام, والضيافة إنما تكون بأطيب الطعام وهو عند الله اللحم المذكى المراق منه الدم, ليكون أول تناول الناس من طعام الضيافة المكرمة. فما دام كانت الأيام موجودة قلنا إن التضحية أصل برأسها, وعملنا بالمنصوص, وإذا فاتت الأيام صرنا إلى الأصل وقلنا إن التصدق بعين الشاة أو بالقيمة هو الأصل فحكمنا به
ثم إذا جاء العام الثاني لم ننتقل من هذا الحكم, ولم نقل بقضائها على ما كان في العام الأول

ثم لما فرغ المصنف رحمه الله من بيان أنواع القضاء في حقوق الله تعالى شرع في بيان أنواعه في حقوق العباد فقال:

(ومنها: ضمان المغصوب بالمثل وهو السابق, أو بالقيمة)

أي من أنواع القضاء ضمان الشيء المغصوب بالمثل فيما إذا غصب مثلياً واستهلكه ووجد المثل فيما بين الناس, أو بالقيمة فيما لم يكن له مثل أو كان له مثل ولكن انصرم عن أيدي الناس

And that is because slaughtering in its appointed days carries the possibility of being the *asl* (*asl* here meaning the original ruling) in itself and it also carries the possibillity of being a substitute, such as by giving in *sadaqah* the actual sheep or its value being the real *asl* (the original ruling), but the ruling changed to that of slaughtering because of an extenuating factor, which is that of *dhiyaafah* (being a guest), because in these days, people are the guests of Allaah Ta`aalaa, and when being a guest, there must be the purest of food, and the purest of food to Allaah is meat which is slaughtered

(according to the Sharee`ah) and which has been shed of blood, so that the first (meal) people partake of (on these days) is from the food of noble food of *dhiyaafah*. So, as long as these days are still present (have not passed yet), we say that slaughtering is the *asl* (original ruling) and we act according to the texts, and and when the days have passed, we say that the *asl* (original ruling) is that of giving in charity either the sheep itself or the value of the sheep, and we rule accordingly.

Then, when the next year arrives, we do not move from this ruling, and we do not say that *qadhaa* is necessary because of what had been missed in the first year.

Thereafter, after the author رحمة الله عليه finished explaining the types of *qadhaa* when it comes to the *Huqooq* (Rights) of Allaah Ta`aalaa, he now begins a discussion on the types of qadhaa when it comes to the *Huqooq* (rights) of the bondsmen (of Allaah Ta`aalaa), so he says:

"And from it is: compensating for the looted item with its likeness, and that is the first option (i.e. if it can be compensated for with the likeness of the original, another option will not be chosen), or with the value."

Meaning, from the types of *qadhaa* is that of compensating for the looted item with its likeness, in the case of him having looted something but then it is destroyed, and he finds a likeness of it among the people. Or (compensating) with the value in those things which do not have a likeness, or which have a likeness but is not available among the people (i.e. he cannot acquire it).

فهذا نظير القضاء لمثل معقول لأن المثل والقيمة كلاهما مثل معقول, أما الأول فظاهر إذ هو مثل صورة ومعنىً, وأما الثاني فهو أيضاً مثل معنى وإن لم يكن صورة. ولكن الأول كامل والثاني قاصر, ولهذا قال: <وهو السابق> أي المثل الصوري سابق على المثل المعنوي, فما دام وجد المثل الصوري لم ينتقل إلى المثل المعنوي

ففيه تنبيه على أن القضاء بمثل معقول نوعان: كامل وقاصر

لا يقال: مثل هذا متحقق في حقوق الله تعالى أيضاً فإن قضاء الصلاة بالجماعة كامل وقضاؤها منفرداً قاصر, فلم لم يتعرض له؟

لأنا نقول: عندهم قضاء الصلاة منفرداً كامل, وبالجماعة أكمل, ولا يقيسون حال القضاء على حال الأداء

(وضمان النفس والأطراف بالمال)

هذا نظير للقضاء بمثل في معقول, فإن ضمان النفس المقتولة خطئاً بكل الدية, والأطراف المقطوعة خطئاً بكل الدية أو بعضها غير مدرك بالعقل, إذ لا مماثلة بين الآدمي المالك المتبذل وبين المال المملوك المتبذَّل, وإنما شرعها الله تعالى لئلا تهدر النفس المحترمة مجاناً, إذ القصاص إنما شرع إذا كان عمداً لتحصل المساواة

(وأداء القيمة فيما إذا تزوج على عبد بغير عينه)

هذا نظير للقضاء الذي في معنى الأداء, ولهذا عبر عنه بلفظ الأداء

This is an example of *qadhaa* with a likeness that can be understood by the intellect, because a likeness and the value of the likeness are not things that can be understood by the intellect. As for the first, then it is clear, because it is a likeness both in terms of the actual form and in terms of the meaning, and as for the second (a likeness in terms of value), then it is a likeness in terms of the meaning albeit not in terms of the form. But, the first is *kaamil* (complete) and the second is *qaasir* (deficient), and for this reason the author says, "It (the first) takes precedence." Meaning, the likeness which resembles (the original) both in form and meaning takes precedence over the one that resembles it only in meaning (i.e. the value of it). So, as long as a likeness which resembles it both in form and meaning can be found, a likeness that resembles it only in meaning will not be resorted to. In this there is a notification that *qadhaa bil-mithl* (*qadhaa* with a likeness) is of two types: *kaamil* (complete) and *qaasir* (deficient).

It is not to be said: This likes of this can be achieved when it comes to the *Huqooq* (Rights) of Allaah Ta`aalaa also, because *qadhaa* of Salaah in *jamaa`ah* is *kaamil* and performing *qadhaa* of it individually is *qaasir*, so why was that not considered?

That is because we (the Ahnaaf) say: According to them, *qadhaa* Salaah performed individually is *kaamil*, and performed in *jamaa`ah* it is *akmal* (most

complete), and they do not make *qiyaas* regarding the state of *qadhaa* based on the state of *adaa*.

The author says: "And compensation of a life and limbs with wealth."

This is an example of *qadhaa* with a likeness which cannot be understood by the intellect, because compensating for a life that was killed unintentionally with a complete *diyyah* (blood money), or limbs that were chopped off unintentionally with a complete or partial *diyyah* (blood money), this is not understood by the intellect, because there is no resemblance between a human being that owns (wealth) and spends (it) and between wealth that is owned and spent. However, it was legislated by Allaah Ta`aalaa so that the sacred lives of people are not killed for free (i.e. without consequence), because *qisaas* (retribution) is only legislated in the case of intention (killing or damage) so that equality can be achieved.

The author says: "And giving the value in the case of marrying (a woman to) a slave with other than him (i.e. other than that exact slave)."

This is an example of *qadhaa* that is in the meaning of *adaa*, and for this reason he referred to it with the term of *adaa*.

أي إذا تزوج الرجل امرأة على عبد بغير عينه فحينئذ إن اشترى عبداً وسطاً وسلمه إليها فلا خفاء أنه أداء, وإن أدى إليها قيمة عبد وسط فهذا قضاء لكنه في معنى الأداء, لأن العبد معلوم الذات مجهول الصفة فلابد في قطع المنازعة بينهما من أن يسلمها عبداً وسطاً, والوسط لا يتحقق إلا بالتقويم ليكون قليل القيمة أدنى وكثير القيمة أعلى وأوسط بين بين, فكان المرجع إلى القيمة التقويم فلهذا كانت القيمة في معنى الأداء

Meaning, if a man marries a woman off to a slave without specifying him, then, if he purchases an average slave and gives him to her, then it is not hidden that this will be regarded as *adaa*. If he gives to her the value of an average slave, this will be *qadhaa* but in the meaning of *adaa*, because the being of the slave is known (i.e. it is known that he is a slave) but the description (of him) is not known; thus, in order to prevent any disagreement between them, it is necessary that he gives to her an average slave, average in the sense that a slave of little value will be less than him and a slave of a lot of value will be above him, and he himself is in the middle (i.e. average), so when it comes to (what the) value (given should be), it goes to the middle (road, the average). Thus, (giving the) value (of the slave) will be in the meaning of *adaa*.

(حتى تجبر على القبول كما لو أتاها بالمسمى)

تفريع على كونها في معنى الأداء, أي تجبر المرأة على قبول القيمة كما لو أتاها بالعبد المسمى تجبر على قبول العبد, فكذا تجبر على قبول القيمة

ثم ذكر المصنف رحمه الله تفريعين لأبي حنيفة على قوله <وهو السابق> فقال:

(وعلى هذا قال أبو حنيفة رحمه الله في القطع ثم القتل عمداً للولي فعلهما)

أي لأجل أن المثل الكامل سابق على المثل القاصر قال أبو حنيفة رحمه الله في صورة قطع رجل يد رجل عمداً ثم قتله قبل أن يبرأ: ينبغي للولي أن يفعل مثل ما فعل القاتل, فيقطعه أولاً ثم يقتله ليكون جزاء الفعل بالفعل, إذ الفعل متعدد من القاتل فينبغي أن يكون كذلك من الولي رعاية للمثل الكامل ولو اقتصر على القتل جاز له أيضاً, لأنه عفا عن بعض موجبه فصار كما إذا عفا عن كله

The author says: "She (the woman) is forced to accept, just as how (she would be forced to accept) if he came to her with the named (i.e. promised slave)."

This is a branching off with regards to the issue of it being in the meaning of *adaa*, i.e. the woman is forced to accept the value (of the slave) just as how, if he had come to her with the slave (that had been promised), she would be forced to accept the slave, so similarly she will be forced to accept the value (of the slave).

Thereafter, the author رحمة الله عليه mentions two more branches off (from this issue) from Imaam Abu Haneefah, with regards to his saying: "And that is the preferred." He (the author) said:

"For this reason, Abu Haneefah رحمة الله عليه said that with regards to (the case of) cutting off (a limb) and killing (both done intentionally), the *wali* (guardian of the victim) has the right to do both (to the perpetrator)."

Meaning, because of the fact that a likeness that is complete takes preference over a likeness that is incomplete, Imaam Abu Haneefah رحمة الله

عليه said, with regards to a scenario of one man cutting off the hand of another man and then killing him before he recovers: "It is appropriate for the *wali* (guardian) to do as the killer had done, so he will cut off (the hand of the killer) and then kill him, so that the recompense of (the action of the murderer) can be with a like action.The action was multiplied by the murderer (i.e. he had both chopped off a limb and killed) so it is appropriate that the *wali* do the same (unto him), out of consideration for the fact a complete likeness (similarly). However, if he (the guardian) suffices with just killing (the murderer), that is permissible for him to do as well, because in this, he would have pardoned some of what (the perpetrator had done, which in this case is the cutting off of a limb), so it becomes as though he had pardoned all of it."

وعندهما لا يقتص الولي إلا بالقتل, لأن موجب القطع دخل في موجب القتل إذا أفضى إليه ولم يبرأ بينهما, وهذه المسألة على ثمانية أوجه, والمذكور في المتن واحد منها, وذلك لأنه لا يخلوا إما أن يكون القطع والقتل عمدين أو خطأين, أو الأول عمداً والثاني خطئاً, أو بالعكس فهي أربعة

وعلى كل تقدير منها إما أن يتخلل بينهما برء أو لا, فإن كان الثاني بعد البرء فهما جنايتان إتفاقاً لا يتداخلان سواء كانا عمدين أو خطأين, أو كان أحدهما عمداً والآخر خطئاً. وإن كان قبل البرء فإن كان أحدهما عمداً والآخر خطئاً لا يتداخلان إتفاقاً, وإن كانا خطأين يتداخلان إتفاقاً, وإن كانا عمدين فهو المسألة الخلافية المذكورة في المتن يتداخلان عندهما لا عنده, وهذا كله إذا صدرا عن شخص واحد, فإن صدرا عن شخصين فالكلام فيه طويل يعرف في موضعه

(ولا يضمن المثلي بالقيمة إذا انقطع المثل إلا يوم الخصومة)

<تفريع ثان لأبي حنيفة رحمه الله على قوله: <وهو السابق>

يعني إذا غصب شخص من آخر مثلياً, ثم انقطع المثل وانصرم عن أيدي الناس, فلا جرم تجب قيمته, فقال أبو حنيفة رحمه الله: لا يضمن هذا المثلي بالقيمة إلا بقيمة يوم الخصومة, لأنه ما لم تقع الخصومة يحتمل أن يقدر على المثل الصوري وهو مقدم على المثل المعنوي, فإذا وقعت الخصومة فحينئذ لابد أن يأخذ المالك الضمان فيقدر الضمان بقيمة يوم الخصومة

According to (Imaam Abu Yusuf and Imaam Muhammad), the *wali* (guardian) may not seek retribution except through killing, because that (crime) which had necessitated the severing of a limb enters into (the crime) that had necessitated execution, if (the killer) had done both (and the victim) had not recovered between (the occurance of the two crimes).

This *mas'alah* has eight views, that which has been mentioned in the *matn* (text of this book) being but one of them, and that is because either both the crimes of severing (a limb) and murder had been intentional or unintentional, or the first was intentional and the second was unintentional, or vice-versa, so there are four (possibilities).

Then, regardless of which (of these four) is the case, either there was a recovery between these two (crimes) or there was not. If the second (crime) had taken place after the victim had become healed then they are two separate crimes, by consensus, and they do not enter into one another these two crimes, i.e. they will not be treated as one), regardless of whether they had been intentional or unintentional, or one of them was intentional and the other was unintentional.

However, if (the second crime) took place prior to (the victim) healing, then, if one (of the crimes) was intentional and the other was unintentional, they will not enter into one another, according to consensus. However, if both were uninteional, they will enter into one another (be treated as one), by consensus. If both of them were intentional, then that is the *mas'alah* disagreed upon mentioned in the *matn* (text); according to (Imaam Abu Yusuf and Imaam Muhammad) they enter into one another (i.e. get treated as one), but according to (Imaam Abu Haneefah), they do not (get treated as one).

All of this (applies) if the (crimes) had come from just one individual; however, if (the guilty party) comprises of two individuals, then there is a lengthy discussion regarding the ruling and which will be known in its place. The author says: "And a likeess is not compensated for with (its) value, if the likeness is no longer available, except on the day of the dispute."

This is the second branching off (on that issue) on the view of Imaam Abu Haneefah رحمة الله عليه, regarding his saying: "It is preferred."

Meaning, if one person forcefully seizes something from another individual, and that thing which he had taken has a likeness, and then that likeness gets cut off and becomes unavailable to people, then undoubtedly (recompensing) with its value becomes obligatory.

Imaam Abu Haneefah رحمة الله عليه said: "This likeness (that was taken) will not be recompensed with its value except on the day of the dispute, because as long as the dispute (i.e. the day the case gets taken to the judge) has not taken place, there remains the possibility of acquiring its likeness in the interim, because a physical likeness is given preference over an immaterial or abstract likeness. When the dispute takes place, the owner must take the compensation, and the compensation will be calculated on the value (of the seized item) on the day of the dispute."

وعند أبي يوسف رحمه الله تعتبر قيمة يوم الغصب, لأنه لما انقطع المثل إلتحق بما لا مثل له من ذوات القيم, وفيها تجب قيمة يوم الغصب بالإتفاق

قلنا: الأصل ثمة كان رد الأصل, وإذا عجز عنه بالإستهلاك تجب عليه قيمة ذلك اليوم, وهاهنا الأصل أيضاً رد العين وإذا عجز عنها يجب رد المثل فإذا عجز عن المثل وظهر عند القاضي تجب عليه قيمة ذلك اليوم

وعند محمد رحمه الله تجب عليه قيمة يوم الإنقطاع, لأن العجز عن رد الأصل إنما يتحقق في هذا اليوم

قلنا: نعم! ولكن يظهر ذلك العجز وقت الخصومة
ثم إنه لما نشأت من هذا كله مقدمة وهي أن الضمان لا يجب إلا عند وجود المماثلة سواء كانت كاملة أو قاصرة, صورة أو معنى, فرّع عليها المصنف رحمه الله ثلاث مسائل على طبق مذهبه مخالفاً للشافعي رحمه الله, وإن لم تكن تلك المقدمة مذكورة في المتن فقال:

(وقلنا جميعاً: المنافع لا تضمن بالإتلاف)

وهو عطف على قوله: <قال أبو حنيفة>

أي ومن أجل أن ما لا يعقل له مثل لا يضمن قلنا جميعاً – يعني أبا حنيفة وأبا يوسف ومحمداً رحمهم الله بخلاف الشافعي رحمه الله: لا يضمن منافع ما غصبه رجل بالإتلاف وكذا بالإمساك

وصورتها: رجل غصب فرساً لأحد وركبه عدة مراحل أو حبسه في بيته ولم يركب ولم يرسل, فقال علماؤنا جميعاً: إنه لا تضمن هذه المنافع بشيء

أما بالمنافع فظاهر لأنه لو ضمن بالمنافع لكان بأن يركب المالك دابة الغاصب قدر ما ركب الغاصب أو يحبسه قدر ما حبسه الغاصب, وذلك باطل للتفاوت بين راكب وراكب, وبين سير وسير وحبس وحبس. وأما بالأعيان والمال فلأن المنافع عرض لا يبقى زمانين, وغير متقوم بخلاف المال فلا تماثل بينهما

According to Imaam Abu Yusuf **رحمة الله عليه** though, it is valued on what the value of the item was on the day it had originally been taken, because, after a likeness (of it) is no longer available, it transfers to that which has no likeness from the valuable goods, and it becomes obligatory (to recompense) with the value (the item had) on the day it was seized, according to consensus.

We say: The *asl* is to return the actual item itself (to the original owner). Where this is not possible on account of the item having been consumed (used up), it becomes obligatory to (recompense) with the value (it has) on that day. Here again, the *asl* is to return the actual (seized) item, but where he is incapable of that, it becomes obligatory to (recompense) with a likeness (of the seized item). If he is incapable of recompensing with a likeness (of the seized item), and the matter (is taken to) the Qaadhi (Judge), it becomes obligatory upon (the looter) to (recompense) with the value (the item has) on that day.

According to Imaam Muhammad **رحمة الله عليه**, the value that is obligatory upon him to recompense is the value the item had on the day it became unavailable to people, because the incapability of returning the original item only came about on this day.

We say: "Yes! However, that inability only became manifest at the time of the dispute."

Then, an (important point) comes out from all this and that is, recompensating is only *waajib* (obligatory) when there is a likeness (to the seized item) whether it be a complete (likeness) or an incomplete (likeness), and whether it be in form (i.e. physical likeness) or abstract (a likeness in terms of monetary value). The author **رحمة الله عليه** branches off three issues

from that according to his Madh-hab, contrary to Imaam ash-Shaafi`ee رحمة الله عليه, even though that (point) was not mentioned in the text (of the book). He says:

"And all of us say: the benefits (of the item) are not recompensed in the event of ruin."

This is coupled to his statement: "Abu Haneefah said".

Meaning, in those things where there is no logically understood likeness, there is no compensation according to the Sharee`ah. All of us say, i.e. Imaam Abu Haneefah, Imaam Abu Yusuf and Imaam Muhammad رحمة الله عليهم, contrary to Imaam ash-Shaafi`ee رحمة الله عليه: "There is no compensation for the benefits derived by a man from the item which he had looted in the event of it being destroyed (or spoiled), and similarly (is the case) with withholding."

An example of such a scenario is: a man forcefully takes a horse from someone, and he rides it for a number of journeys, or he keeps it at his house and does not ride on it and nor does he send it (away). All of our `Ulamaa say: "There is no recompense for these benefits (he had derived from the horse)."

As for the benefits, then it is clear, because if there were to be compensation for benefits (derived), then (it would have to be) by the owner riding (the horse) of the looter for the same period of time as the looter had ridden on the horse of the owner, or that the owner keeps the horse of the looter (indoors, i.e. without using it) for the same period of time as the looter had done so with the horse of the owner, and that is invalid because of the equality of one ride and another and one journey and another and one keeping (the horse back) and another. As for when it comes to specific (people) and wealth, then the benefits are transient, it does not remain two times (i.e. can only be used once), and it cannot be evaluated, unlike money.

وإنما ضمناها بالمال في الإجارة, لأن للرضا تأثيراً في إيجاب الأصول والفضول جميعاً, ولا تأثير للعدوان فيه

والشافعي يقول بضمانها بالمال بقدر العرف في كرائها إلى ذلك المنزل قياساً على الإجارة, والوجه ما قلنا. ولابد لك حينئذ من الفرق بين المنافع والزوائد, فالمنافع: كركوب الدابة والحمل عليها, والزوائد: كالنسل للدابة, واللبن لها, والثمرة للشجرة ونحوها

فالمغصوب بنفسه يضمن بالهلاك والإستهلاك جميعاً, والزوائد تضمن بالإستهلاك دون الهلاك, والمنافع لا تضمن بالإستهلاك والهلاك

فعبر المصنف عن الإستهلاك بالإتلاف, ولم يذكر الهلاك وهو الحبس وهو غير مضمون قياساً على الزوائد, فإن الزوائد لما لم تضمن بالهلاك فالمنافع أولى أن لا تضمن به, وهذا الفرق مما يتخبط فيه كثير من الناس

(والقصاص لا يضمن بقتل القاتل)

تفريع ثان لنا على أن ما لا مثل له لا يضمن أصلاً, يعني أن من وجب عليه قصاص لغيره فقتل القاتل أجنبي غير ورثة المقتول فلا يضمن هذا الأجنبي لأجل ورثة المقتول شيئاً من الدية والقصاص عندنا, وإن كان يضمن لأجل ورثة هذا القاتل البتة

We say that there is compensation with wealth in the case of *ijaarah* (leasing), because permission and pleasure (of the owner) has an effect in obligating the roots (the items themselves) and the extras (those things connected to the main items) both, and transgression has no effect in it.

Imaam ash-Shaafi`ee says there is compensation for wealth (calculated) according to *`urf* (custom) in leasing it to that place, as *qiyaas* (analogical deduction) upon *ijaarah* (leasing), but (the correct view) is what we have stated. It is necessary for you, then, to differentiate between the *manaafi`* (benefits) and the *zawaa'id* (extras). The *manaafi`* are things such as riding the animal, carrying (goods) on it, etc. The *zawaa'id* are things such as offspring of the animal, and its milk, and the fruits of a tree, etc.

The looted (forcefully seized) item itself is compensated for in the case of *halaak* (being destroyed) or *istihlaak* (being consumed or used up). The *zawaa'id* are compensated for in the case of *istihlaak*, not *halaak*. The *manaafi`* are not compensated for, neither in *istihlaak* nor in *halaak*.

The author refers to *istihlaak* as *itlaaf* (spoiling; ruining) and he did not mention *halaak*, which in this case is the restraining of the horse (i.e. keeping it tied up, not riding it and not using it), and there is no compensation for it, using *qiyaas* on *zawaa'id*, because the *zawaa'id*, since they do not get compensated for in the case of *halaak* (destruction, or death, or expiring by itself, etc.) then it is more rightful that there is no compensation for the *manaafi`* (benefits derived), and this difference (between the two) is a matter in which most people are confused.

The author says: "There is no compensation for *qisaas* (retribution) by the killing of the killer."

This is a second branching off for us with regards to (our view) that those which have no likeness, there is no compensation for it, originally, i.e. in the case of a person whom, it is obligatory upon him to carry out *qisaas* for another, but a stranger who is not from the heirs of the victim then kills the killer, then there is no compensation for this stranger for the sake of the heirs of the murdered victim (i.e. the one killed by the original killer), neither *diyyah* (blood-money) nor *qisaas* (retribution), according to us (Ahnaaf), although there is compensation for the sake of the heirs of the murderer, absolutely.

وذلك لأن القصاص معنى غير متقوم في نفسه لا يعقل له مثل حتى تقول: إن الأجنبي ضيع قصاصه فتجب عليه الدية, كما قال الشافعي. وإنما يتقوم في حق الدية فيما لا يمكن المماثلة فيه لئلا يلزم إهدار الدم بالكلية ضرورة

وهاهنا الأجنبي ما ضيع لأولياء المقتول شيئاً بل قتل عدوهم فكأنه أعانهم

نعم! يضمن ذلك لأجل أولياء هذا القاتل إما قصاصاً وإما دية على حسب ما تحقق

(وملك النكاح لا يضمن بالشهادة بالطلاق بعد الدخول)

تفريع ثالث لنا على أن ما لا مثل له لا يضمن. يعني إذا شهد الرجلان بأنه طلق امرأته بعد الدخول فحكم القاضي عليه بأداء المهر والتفريق, ثم رجع الشاهدان فعندنا لا يضمنان للزوج شيئاً, لأن المهر كان واجباً عليه بسبب الدخول سواء كان طلقها أو لا, فما أتلفا عليه شيئاً إلا حل استمتاعه بالمرأة, وهو الذي يعبر عنه بملك النكاح, وليس له مثل لا مماثلة البضع ببضع

آخر فإن ذلك في الشريعة حرام, ولا مماثلة بالمال لأن تقومه بالمال لا يظهر إلا عند النكاح ضرورة لشرفه ولا يظهر عند التفرق أصلاً, ولهذا صحت إزالته بالطلاق بلا بدل ولا شهود ولا ولي ولا إذن

That is because *qisaas* (retribution) is an abstract matter which cannot be evaluated in and of itself and no logical likeness can be found for it, thus (a person cannot) say: "The stranger wasted the *qisaas* (of the person who had been placed in charge of carrying it out), and thus the *diyyah* (blood-money) is obligatory upon him." as Imaam ash-Shaafi`ee had said. Rather, it is only evaluated in terms of the *diyyah* in that wherein there is no likeness so that there is no wasting of life altogether, necessarily. In this scenario, the stranger did not waste anything of the heirs (family members, relatives, etc.) of the victim; rather, he killed their enemy, so it is as though he helped them.

Yes! He is responsible for compensation on account of the heirs of the murderer, either with *qisaas* or with *diyyah*, according to what gets decided.

The author says: "There is no compensation for the possession of *nikaah* through testifying to *talaaq* after consummation of the marriage."

This is a third branching off with regards to our view that when a thing has no likeness, there is no compensation. Meaning, if two men testify that so-and-so divorced his wife after consummation of the marriage, and so the Qaadhi (Judge) rules that he gives her the *mahr* and separates from her, and thereafter the two witnesses retract their testification, then, according to us, they do not compensate anything to the husband, because the *mahr* had been obligatory upon him (to give to her) in any case, whether he were to divorce her or not, and so they have not destroyed anything of his other than (preventing him) from deriving enjoyment from the woman (for a period of time), and that is what has been referred to (by the author) as the "possession of *nikaah*", and it has no likeness. There cannot be a likeness of intercourse with one woman with intercourse with another (i.e. there cannot be, as a compensation, that this man now sleeps with the wives of the two witnesses), because that is Haraam in the Sharee`ah. Wealth can also not be brought as a likeness, because evaluating it with money does not appear except in (getting married), necessarily, to show the honour (of marriage), and it does not appear when parting (i.e. divorcing), as a rule, and for this reason it is valid to depart from the woman with *talaaq* (divorce) without any substitute, or witnesses, or *wali*, or permission.

وإنما تصير متقومة في الخلع بالنص على خلاف القياس. وإنما قيد بالطلاق بعد الدخول لأنه إذا شهدا بالطلاق قبل الدخول ثم رجعا يضمنان نصف المهر للزوج, لأن قبل الدخول لا يجب عليه المهر إلا عند الطلاق لأنها تحتمل أن ترتد أو طاوعت ابن الزوج فحينئذ يبطل المهر أصلاً, وإنما أكد نصف المهر فكأن الشاهدين أخذا نصف المهر من يد الزوج وأعطاها فيضمنان ما أعطاها

ثم لما فرغ المصنف من بيان أنواع الأداء والقضاء شرع في بيان حسن المأمور به فقال:

It (money) only becomes evaluated in the case of *khula`* because there is nass (regarding this), not *qiyaas*.

He restricted it to *talaaq* after consummation because if those two witnesses testify that (he had issued) *talaaq* prior to consummation, and thereafter they retract their testification, then they will be liable to compensate the husband for half of the *mahr*, because prior to consummation, it is not *waajib* on the husband to give her *mahr* except in the case of *talaaq*, because there is the possibility that she might become a Murtadd, or that she might consent to (i.e. have relations with) the son of this husband (that she married), in which case the *mahr* will fall away, as a rule.

He emphasised half the *mahr*, in the case of *talaaq*, because it is as though the two witnesses had taken half of the *mahr* out of the hand of the husband and given it to (the wife).

After the author completed his explanation of the types of *adaa* and *qadhaa*, he now begins explaining the issue of goodness in the thing that is commanded, so he says:

(ولابد للمأمور به من صفة الحسن ضرورة أن الآمر حكيم)

يعني لابد أن يكون المأمور به حسناً عند الله تعالى قبل الأمر, ولكن يعرف ذلك بالأمر ضرورة أن الآمر حكيم, والحكيم لا يأمر بالفحشاء وهذا عندنا, وعند المعتزلة الحاكم بالحسن والقبح هو العقل لا دخل فيه للشرع, وعند الأشعري الحاكم بهما هو الشرع لا دخل فيه للعقل

ثم شرع في تقسيم الحسن إلى عينه وإلى غيره, وتقسيم كل منهما إلى أقسامها فقال:

(وهو إما أن يكون لعينه)

أي الحسن إما أن يكون لذات المأمور به بأن يكون حسنه في ذات ما وضع له ذلك من غير واسطة. وهذا ثلاثة أنواع على ما قال:

"The thing which is commanded will always possess the quality of goodness because He Who gives the command (i.e. Allaah Ta`aalaa) is All-Wise."

Meaning, the command given will always by good according to Allaah Ta`aalaa prior to (Him giving) the command, but that is known with the command, necessarily, because the Issuer of the Commands is All-Wise, and someone who is wise does not order with shamelessness, and this is according to us. According to the Mu`tazilah, the thing that decides whether something is good or bad is the intellect, and the Sharee`ah plays no part in that. According to Imaam al-Ash`ari, the thing that decides whether something is good or bad is the Sharee`ah, and the intellect plays no part in that.

Thereafter, the author begins dividing "*hasan*" (good) into what is *hasan li-`aynihi* (good in and of itself) and what *hasan li-ghayrihi* (good because of something else), and he then goes on to further divide each of those into their categories, so he says:

"It (goodness) is either (good) in and of itself."

Meaning, *hasan* (good) is either because the very thing itself that is commanded is good, because its goodness lies in what is what placed for without any intermediary. This is of three types, according to what has been mentioned.

(وهو أما أن لا يقبل السقوط, أو يقبله)

أي لا يقبل ذلك الحسن السقوط من المأمور به, بل يكون دائماً حسناً ومأموراً به على المكلف, وواجباً عليه, أو يقبل السقوط في حين من الأحيان لعذر من الأعذار

(أو يكون ملحقاً بهذا القسم لكنه مشابه لما هو حسن لمعنى في غيره)
أي يكون المأمور به ملحقاً بالحسن لعينه لكنه مشابه للحسن لغيره فهو ذو وجهتين

"Either it (*hasan*) is such that it does not accept falling away, or it is such that it accepts falling away."

Meaning, either the *hasan* (goodness) is such that it never falls away from the thing which was commanded, but rather, it is always good, commanded upon the *mukallaf* (one who is bound to obey the laws of the Sharee`ah), obligatory upon him. Or, the *hasan* is such that it falls away something, because of some excuse or the other.

The author says:

"Or, it is connected to this type (of *hasan*), but it resembles that which is *hasan* because of some meaning in other than it."

Meaning, the thing which is commanded (is such that) it is connected to (the category) of *hasan li-`aynihi* (that which is good in and of itself), but it resembles *hasan li-ghayrihi* (good because of something else), so it has two facets.

وإنما جعله من أقسام الحسن لعينه إعتباراً للأصل كما ستقف عليه فيما بعد ولكن في هذا التقسيم مسامحة, والواجب أن يقول: وهو إما أن يكون الحسن لعينه بالذات أو بالواسطة, والأول إما أن لا يقبل السقوط أو يقبله, وقد وقع التسامح منه في هذا التقسيم كثيراً

(كالتصديق, والصلاة, والزكاة)

نشر على ترتيب اللف, فالأول مثال لما لا يقبل السقوط, فأن التصديق لازم على المرء ولا يسقط عنه ما دام عاقلاً بالغاً, ولهذا لا يزول حال الإكراه فإن أكره على إجراء كلمة الكفر يجوز له التلفظ باللسان بشرط أن يبقى التصديق على حاله, فالإقرار يقبل السقوط والتصديق لا يقبله قط, وحسن التصديق ثابت لعينه لأن العقل بأن شكر المنعم الخالق واجب

والثاني مثال لما يقبل السقوط, فإن الصلاة تسقط في حال الحيض والنفاس كالإقرار بالإكراه, وحسن الصلاة في نفسها, لأنها من أولها إلى آخرها تعظيم للرب بالأقوال والأفعال, وثناء عليه, وخشوع له, وقيام بين يديه, وجلسته بحضوره وإن كانت الكميات وتعداد الركعات والأوقات والشرائط لا يستقل بمعرفته العقل, ومحتاجاً إلى الشريعة, وقد نبهت أنا لأسرارها في المثنوي المعنوي

He placed it as part of the categories of *hasan li-`aynihi* because of taking into considering the original rule, as you will come to know later on. However,

there is come laxity in this division, and what is necessary is that he should say: It is either *hasan li-`aynihi* (good in and of itself) by itself or with a medium. And the first either accepts falling away or it does not accept it. A lot of laxity has come from him with regards to this division.

The author says:

"Like *tasdeeq* (believing in Allaah Ta`aalaa), Salaah and Zakaah."

This is *nashr* in the order of *laff*[3]. The first is an example of that which does not accept falling away, because *tasdeeq* is forever binding upon the person - it never falls away from him so long as he is an adult and sane. For this reason, it does not fall away in the case of *ikraah* (coercion). If he is forced to utter a word of Kufr, it is permissible for him to utter it with the tongue on condition that the *tasdeeq* remains (in his heart), because *iqraar* (verbal testification of Islaam) accepts falling away (i.e. such as in a case like this), but *tasdeeq* never ever accepts falling away. *Tasdeeq* being *hasan* (good) is established in and of itself, because the intellect can understand logically the obligation of gratitude towards The Bestower, The Creator.

The second is an example of that which accepts falling away, because Salaah falls away in the case of *haidh*, and *nifaas*, just as *iqraar* (verbal testification) falls away in the case of *ikraah* (coercion). Salaah being *hasan* (good) in and of itself is because from beginning to end, it is about glorifying Allaah Ta`aalaa with statements and with actions, and praising Him, and having *khushoo`* (humility) for Him, and standing in front of Him, and sitting in His Presence, even though the method of Salaah, the number of *raka`aat*, the times and the conditions are not known through the intellect alone but only through the Sharee`ah. I have expained its secrets in *al-Mathnawi al-Ma`nawi*.

[3] This is part of *`Ilm al-Balaaghah* (Rhetoric of the Arabic Language). In brief, it refers to a type of joining and expansion. For example, take this sentence: "The government plans on building more schools and more hospitals, with more books and more beds." He could have said: "The government is going to build more schools with more books and more hospitals with more beds." But the way of saying it in the *laff* and *nashr* style is like the example given here. The normal method of speaking is to mention an entity and then expand on it, and then the next entity and expand on it (such as by describing it, etc.) In the *laff* and *nashr* way, you will mention it like: entity 1, entity 2, followed up by expansion 1, expansion 2. So, you will have a sentence having two parts: in the first part of the sentence, known as the *laff* part (you can translate *laff* as joining, or tying up), you will mention entity 1 and entity 2. In the second part of the sentence, which is the *nashr* (expansion) part, you will mention expansion 1 and expansion 2 which explains entity 1 and entity 2. And Allaah Ta`aalaa knows best.

والثالث مثال لما يكون ملحقاً لعينه ومشابهاً لغيره, فإن الزكاة في الظاهر إضاعة المال وإنما حسنت لدفع حاجة الفقير الذي هو محبوب الله تعالى وحاجته ليست باختياره بل بمحض خلق الله تعالى كذلك

وكذا الصوم في نفسه تجويع وإتلاف للنفس وإنما حسن لقهر النفس الأمارة التي هي عدو الله تعالى, وهذه العداوة بخلق الله تعالى لا اختيار للنفس فيها

وكذا الحج في نفسه سعي وقطع مسافة ورؤية أمكنة متعددة وإنما حسن لشرف في المكان الذي شرفه الله تعالى على سائر الأمكنة وتلك الشرافة ليست باختيار الأمكنة بل بخلق الله تعالى كذلك, فصار كأن هذه الوسائط لم تكن حائلة فيما بين, فكانت حسنة لعينها

The third is an example of that which is connected to *hasan li-`aynihi* but which resembles *hasan li-ghayrihi*, because Zakaah, on its outward appearance, is the wastage of wealth; however, it becomes good because of its fulfilling the needs of the poor who is beloved to Allaah Ta`aalaa, and his being in need is not by his own choice but because of how Allaah Ta`aalaa has created (i.e. decreed it to be) like that.

Similarly, fasting in and of itself is starving and ruining the *nafs*; however, it becomes good because of its (leading to) overpowering the *Nafs-e-Ammaarah* (the *nafs* which always calls towards evil) which is an enemy of Allaah Ta`aalaa, and this enmity is because Allaah Ta`aalaa has created (i.e. decreed it) as such, and the *nafs* has no choice regarding it.

Similarly, Hajj in and of itself is about rushing, traveling, seeing a number of different places, but it becomes good because of the honour of the place (i.e. Makkah) which Allaah Ta`aalaa has honoured over all other places, and that honour is not by the choice of the places, but rather, because Allaah Ta`aalaa created (decreed it to be) like that, so it becomes as though these mediums are not a barrier between (them), and thus they become *hasan li-`aynihi* (good in and of themselves).

(أو لغيره)

عطف على قوله (لعينه) أي الحسن إما أن يكون لغير المأمور به بأن يكون منشأ حسنه هو ذلك الغير والمأمور به لا دخل له فيه. وهو ثلاثة أنواع أيضاً على ما بينه بقوله:

وهو إما أن لا يتأدى بنفس المأمور به, أو يتأدى به, أو يكون حسناً لحسن في شرطه بعد ما (كان حسناً لمعنى في نفسه, أو ملحقاً به

في هذا التقسيم وأمثلته مسامحات, لأن ضمير (هو) راجع إلى الغير, وضمير (يكون) راجع إلى المأمور به, وفيه انتشار. والمعنى أن ذلك الغير الذي حسن المأمور به لأجله إما أن لا يتأدى بنفس فعل المأمور به, بل لابد أن يوجد المأمور به بفعل آخر فهو كامل في كونه حسناً لغيره, أو يتأدى بنفس بعل المأمور به لا يحتاج إلى فعل آخر فهو قريب من الحسن لعينه. أو يكون ذلك المأمور به حسناً لحسن في شرطه وهو القدرة, يعني لا يكلف الله تعالى لأحد بأمر من المأمور إلا بحسب طاقته وقدرته فهذا أيضاً حسن

The author says: "Or (*hasan*) *li-ghayrihi*."

This is coupled to his statement, "(*Hasan*) *li-`aynihi*." Meaning, *hasan* (goodness) is either because of other than the commanded thing, such as the goodness coming out from that other thing and the actual commanded thing not entering into it, and that is of three types also, as he explained by saying:

"It is either, it is not discharged (i.e. falls away from the responsibility of the *mukallaf*) through the commanded thing, or it is discharged through it, or it is *hasan* (good) because of a goodness in its condition, after it had been *hasan* (good) becaus of a meaning in and of itself or that it is connected to."

In this division and its examples there is laxity, because the pronoun "it" refers to "other", and the pronoun in "it becomes" refers to the commanded thing, and in that is an expansion. The meaning is that this "other" which the command becomes *hasan* (good) on account of, either it is not discharged by the commanded thing itself, but rather it is necessary that the commanded thing be found (with another action, so it is complete in its being *hasan* (good) for (because of) other than itself. Or, (it is such that) it is discharged by the very action commanded itself, having no need for another action, for then it is very near to (being) *hasan li-`aynihi* (good in and of itself). Or, that commanded thing is *hasan* (good) because of a goodness in its condition, which is *qudrah* (capability; power), i.e. Allaah Ta`aalaa does not impose a command on anyone except according to what he can bear and what he is capable of, so this also is *hasan* (good).

وهذا القسم ليس بقسم في الواقع ولكنه شرط للأقسام الخمسة المتقدمة, لعينه ولغيره, ولهذا لم يذكره الجمهور بعنوان التقسيم, وإنما ذكره فخر الإسلام مسامحة وسماها ضرباً سادساً جامعاً لكل من الخمسة المقدمة. فإذا كان جامعاً فينبغي أن يقول بعدما كان حسناً لمعنى في نفسه أو ملحقاً به أو لغيره حتى يكون المعنى أن المأمور به بعد ما كان حسناً لمعنى في نفسه كالتصديق والصلاة, أو ملحقاً به كالزكاة والصوم والحج, أو لغيره كالوضوء والجهاد صار حسناً لمعنى آخر وهو كونه مشروطاً بالقدرة فلهذه القدرة صارت أوامر الشرع كلها حسنة للغير

This category is not a category in reality, but rather, it is a condition for the other five categories mentioned previously, *li-`aynihi* and *li-ghayrihi*. For this reason, the majority have not mentioned it under the heading of division (i.e. have not regarded it as a separate category). Fakhr-ul-Islaam mentioned it out of lenience and named it as a sixth, inclusive form for all of the previous five types. Then, if it is inclusive, then it is necessary that he says, after it is *hasan* (good) because of a meaning in itself or connected to it or because of other than it, until the meaning is that the thing which is commanded, after it is *hasan* (good) because of a meaning in itself, like *tasdeeq*, and Salaah, or connected to it like Zakaah and, and fasting and Hajj, or other than it like Wudhoo and Jihaad, it becomes *hasan* (good) because of another meaning, and that is its being conditioned by *qudrah* (capability). Because of this *qudrah*, the Commands of the Sharee`ah are all *hasan* (good) because of something else.

ولكن الحسن لمعنى في نفسه والملحق به صار جامعاً لكونه لعينه ولغيره ولهذا قيده بهما بخلاف ما إذا كان لغيره فإنه إجتمع فيه الحسن لغيره من جهته, لأجل الغير المعين ولأجل القدرة فلا يخرج عن كونه لغيره ولعله لهذا لم يقيده به. ثم بعد هذه المسامحات الثلاثة قد تسامح في أمثلته حيث قال:

(كالوضوء والجهاد والقدرة التي يتمكن بها العبد من أداء ما لزمه)

فالوضوء مثال للمأمور به الذي لا يتأدى الغير بأدائه فإنه في نفسه تبرد وتنظيف للأعضاء وإضاعة للماء وإنما حسن لأجل أداء الصلاة

والصلاة مما لا يتأدى بنفس فعل الوضوء بل لابد لها من فعل آخر قصداً توجد به الصلاة وإذا نوى في هذا الوضوء كان منوياً وقربة مقصودة يثاب عليها

والجهاد مثال للمأمور به الذي يتأدى الغير بأدائه فإنه في نفسه تعذيب عباد الله وتخريب بلاد الله, وإنما حسن لأجل إعلاء كلامة الله, والإعلاء يحصل بمجرد فعل الجهاد لا بفعل آخر بعده

وكذلك إقامة الحدود في نفسها تعذيب وإنما حسن لزجر الناس من المعاصي والزجر يحصل بمجرد إقامة الحدود لا بفعل آخر بعده

But, that which is *hasan* (good) because of a meaning in itself, and that which is *hasan* because of what it is connected to, it becomes inclusive because of its state of being (for) *li-`aynihi* and *li-ghayrihi*, and for this reason, he restricted it to the two of them, contrary to if it is (*hasan*) *li-ghayrihi*, for it *hasan li-ghayrihi* is included in it from its facet, because of the specified other and because of the *qudrah* (capability), so it does not exit from its state of being *li-ghayrihi*, and perhaps for this reason he did not restrict it with it. Thereafter, after these three laxities, he was also lax in the examples, so he said:

"Like Wudhoo, and Jihaad, and *qudrah* (strength; ability; capability) which enables the bondsman (of Allaah) to discharge that which is binding upon him."

Wudhoo is an example of a commanded thing which, something else is not discharged by discharging it itself, because in and of itself, it is simply cooling and cleaning the limbs, and wasting water, but it becomes *hasan* (good) for the sake of discharging Salaah. Salaah is not discharged simply by the performance of Wudhoo alone; rather, it (Wudhoo) requires another action intentionally, through which Salaah is found. If he made a *niyyah* (intention) in this Wudhoo, then it will be that he has intended proximity (to Allaah Ta`aalaa) and he will be rewarded for it.

Jihaad it an example of a commanded thing which, something else is discharged by discharging it (Jihaad), because in and of itself, it is punishing the bondsmen of Allaah and destroying the lands of Allaah, but it becomes *hasan* (good) because of raising the Kalimah of Allaah, and this *I`laa* (raising) is acquired by simply performing Jihaad and without needing a separate action.

Similarly, the carrying out of the *Hudood* (punishments prescribed by the Sharee`ah) is, in itself, a punishing, but it becomes *hasan* (good) because of its restraining the people from disobedience, and this restraining is acquired simply by carrying out the *Hudood*, without needing another action.

وكذلك صلاة الجنازة في نفسها بدعة مشابهة لعبادة الأصنام, وإنما حسنت لأجل قضاء حق المسلم وهو يحصل بمجرد صلاة الجنازة لا بفعل آخر بعدها

فهذه الوسائط وهو كفر الكافر وإسلام الميت وهتك حرمة المناهي كلها بفعل العباد واختيارهم فلهذا أعتبرت الوسائط هاهنا وجعلت داخلة في الحسن لغيره, بخلاف وسائط الزكاة والصوم والحج أعني فقر الفقير وعداوة النفس وشرف المكان فإنها بمحض خلق الله تعالى ولا إختيار فيها للعبد أصلاً ولهذا جعلت من الملحق بالحسن لعينه فتأمل

Similarly, Janaazah Salaah in and of itself is an innovation which resembles the worship of idols, but it is hasan (good) because of it fulfilling the right of a Muslim, and that is acquired simply by the performance of Salaat-ul-Janaazah without the (performance) of another action.

Therefore, these intermediaries, whcih is the Kufr of the Kaafir, the the Islaam of the deceased, and the tearing up of the sanctity of the prevented things, all of it is by the action of the bondsmen and their choice, and thus these intermediaries have been considered here to be part of *hasan li-ghayrihi*, contrary to the intermediaries of Zakaah, and fasting, and Hajj, i.e. the poverty of the poor person, the transgressing against the self, and the nobility of the place, becaus those are purely by the Creating of Allaah Ta`aalaa (i.e. His Decree), and there bondsmen have no choice in those matters, and for this reason, those were made part of (the category of) those things that are connected to *hasan li-`aynihi*, so ponder about this.

والقدرة مثال للشرط الذي حسن المأمور به لأجله لا للمأمور به, وإن قدرت المضاف وقلت: ومشروط القدرة, كان مثالاً للمأمور به المشروط بها, وإن جعلت ضمير: أو يكون حسناً, راجعاً إلى الغير كما كان ضمير: لا يتأدى, أو: يتأدى, راجعاً إليه كما قيل لم ينتشر الكلام وتكون القدرة مثالاً للغير بلا تكلف لكن يكون الشرط حينئذ بمعنى المشروط ويكون المعنى: أو يكون الغير كالقدرة حسنة لحسن في مشروطها, فانقلب المقصود وانعكس المدعى وبالجملة لا يخلو هذا المقام عن تمحل

ثم وصف القدرة بقوله: يتمكن بها العبد من أداء ما لزمه, للإيماء إلى أن هذه القدرة ليست قدرة حقيقية يكون معها الفعل وتكون علة له بلا تخلف فإن ذلك ليس مدار التكليف, لأنه لا يكون سابقاً على الفعل حتى يكلف بسببه الفاعل, بل المراد بها هاهنا هي القدرة التي بمعنى سلامة

الأسباب والآلات وصحة الجوارح فإنها تتقدم على الفعل, وصحة التكليف إنما تعتمد على هذه الإستطاعة

فقدرة التوضئ وجدان الماء, وإلا فالتيمم, وقدرة توجه القبلة حين عدم الخوف ووجود العلم, وإلا فجهة القدرة أو التحري, وقدرة القيام حين الصحة وإلا فالقعود أو الإيماء, وقدرة الزكاة حين ملك النصاب وإلا فهو معفو, وقدرة الصوم حين الصحة والإقامة وإلا فالقضاء خلفه, وقدرة الحج حين وجدان الزاد والراحلة وصحة الأعضاء وأمن الطريق وإلا فهو تطوع, وعلى هذا القياس

Qudrah is an example of a condition which, the commanded thing is good because of it, not because of the commanded thing itself. Meaning, "The thing stipulated by *qudrah*." It is an example of the commanded thing which is conditioned by it. You could say that the pronoun in, "Or it is *hasan*." refers to something other than it, just as the pronoun in "It is not discharged," and "It is discharged," refers to it as has been mentioned, then the discussion is not expanded and *qudrah* then is an example of "the other" without imposition; however, the condition (*shart*) then will mean "that which has been made stipulated", and the meaning will become: "Or something else, like *qudrah*, becomes *hasan* (good) because of a goodness in its stipulation," and in this case the intended meaning will be reversed as well as the claim, and all in all, this place is not free from seeking.

Thereafter, he described *qudrah* by his saying: "The bondsman is able - through it - to discharge what is binding upon him, indicating thereby that this *qudrah* is not a literal *qudrah* which the action is with and which becomes an *`illah* (cause) for it without any lagging, because that is not the subject of *takleef* (imposition upon the person), because it cannot precede the action so much so that on account of it the person becomes *mukallaf*; rather, the intended meaning of *takleef* (the duties of Sharee`ah being binding upon a person who is *baaligh*, sane) here is that *qudrah* which has the meaning of the causes and instruments being safe and healthy, and the healthiness of the limbs, because that precedes the action, and the validity of *takleef* depends upon this capability.

The *qudrah* (capability) of performing Wudhoo is the finding of water; otherwise, there is Tayammum. The *qudrah* (capability) of facing the Qiblah is the absence of fear (of an enemy) and knowing (what direction it is); otherwise, whatever direction one is capable of facing, or arriving at a conclusion after thinking. The *qudrah* (capability) of standing (in Salaah) is health; otherwise, there is sitting or gesturing. The *qudrah* (capability) of Zakaah is to own the nisaab; otherwise, it is pardoned. The *qudrah*

(capability) of fasting is health and residence (in a town, not being on a journey); otherwise, there is performing *qadhaa* afterwards. The *qudrah* (capability) of Hajj is the finding of sufficient provisions (money, etc.) and a conveyance, and the healthiness of the limbs, and the safety of the road; otherwise, it (Hajj) becomes voluntary (not obligatory), and so on and so forth.

ثم قسم هذه القدرة إلى المطلق والكامل فقال:

(وهي نوعان: مطلق)

أي القدرة التي يتمكن بها العبد وهي بمعنى سلامة الآلات والأسباب نوعان:

أحدهما: مطلق

أي غير مقيد بصفة اليسر والسهولة كما في القسم الآتي

(وهو أدنى ما يتمكن به المأمور من أداء ما لزمه, وهو شرط في أداء كل أمر)

أي المطلق: أدنى ما يتمكن به العبد وهذا القدر من التمكن شرط في أداء كل أمر, والباقي زائد, وهو قدر ما يسع فيه أربع ركعات من الظهر, فإن اكتفى بهذا القدر سمي ممكنة وهو الذي سماه المصنف مطلقاً وكان ينبغي أن يقول: مطلق ومقيد, أو كامل وقاصر

وبازدياد لفظ (أدنى) إفترق بين المقسم والقسم, لأن المقسم هو ما يتمكن بها العبد, والقسم هو أدنى ما يتمكن بها العبد, فلا يرد ما يتوهم أنه يلزم إنقسام الشيء إلى نفسه وإلى غيره, وإنما قيده بأداء كل أمر, لأن القضاء لا يشترط فيه هذه القدرة مطلقاً, بل إذا كان المطلوب الفعل. وأما إذا كان المطلوب السؤال والإثم فلا يشترط فيه ذلك, فإن من عليه ألف صلاة يقال له في النفس الأخيرة من العمر إن هذه الصلاة واجبة عليك, وثمرته تظهر في حق وجوب الإيصاء بالفدية والإثم

(والشرط توهمه, لا حقيقته)

أي الشرط فيما بين هذه القدرة الممكنة الأدنى كونه متوهم الوجود, لا متحقق الوجود

Thereafter, the author divided *qudrah* into *mutlaq* and *kaamil*, so he said:

"And it is two types: *mutlaq*."

Meaning, that *qudrah* which gives the person the ability (to carry out the duty), and which has the meaning of "safety and health of the limbs and instruments and causes", is of two types: one of them is "*mutlaq*" (unrestricted). Meaning, it is not restricted with the quality of easiness like in the coming category (other type).

The author says:

"(It refers to) the absolute lowest level by which the person who is commanded will be able to carry out that which is binding upon him, and this (i.e. having at least this amount of capability) is a condition for every command (i.e. no command becomes binding in the absence of at least this much capability)."

Meaning, *mutlaq* refers to the lowest amount (of capability) by which the person will be able (to carry out the duty), and this level of capability is a condition for the discharge of every command, and it is that amount in which a person will be able to perform four *raka`aat* of Zhuhr (for example). If he suffices with this amount, then this is termed "*mumakkanah*", and it is the same thing which the author has termed "*mutlaq*", though it would have been more appropriate for him to say *mutlaq* and *muqayyad*, or *kaamil* and *qaasir*.

By adding the word "lowest", he divided between *muqassam* and *qasm*, because *muqassam* is that by which the person has the capability (to perform the duty), and *qasm* is the lowest amount the person will need in order to perform (the duty), so there does not occur that which he (i.e. Imaam ibn al-Malik) assumed, that a thing needs to be divided into itself and into other than it. Rather, he (the author) restricted it with the discharge of every command, because this *qudrah* is not a stipulation in *qadhaa*, rather, (it only is a condition) if what is sought is an action. As for if what is sought is questioning or a sin (i.e. if what is sought from the person is to carry out what was requested from him by his deceased relative, for example, of carrying out a *wasiyyat*, and that he will be sinful if he does not carry out the *wasiyyat*) then it (this *qudrah*) is not stipulated, because the person who has 1,000 Salaats due upon him, it is said to him in the final breath of his life,

"This Salaah is obligatory upon you." The fruit (of this difference) is shown (i.e. understood) with regards to the right of the obligation of making a wasiyyat (that the heir pays fidyah, such as for missed Salaats, etc.) and sin (if he does not do so).

The author says:

"The *shart* is its being assumed, not its reality."

Meaning, the *shart* (condition) between this lowest amount of capability is that its existence is assumed, and its existence is not firm and established.

أي لا يلزم أن يكون الوقت الذي يسع أربع ركعات موجوداً متحققاً في الحال بل يكفي وهمه, فإن تحقق هذا الموهوم في الخارج بأن يمتد الوقت من جانب الله يؤديه فيه وإلا تظهر ثمرته في القضاء

حتى إذا بلغ الصبي أو أسلم الكافر أو طهرت الحائض في آخر الوقت لزمته الصلاة لتوهم) الإمتداد في آخر الوقت بوقف الشمس)

والمراد بآخر الوقت الوقت الذي لا يسع فيه إلا مقدار التحريمة, فإذا حدثت هذه الموجبات في هذا الوقت لزمته الصلاة لاحتمال امتداده بوقف الشمس, فإن امتد في الواقع يؤديه فيه وإلا يقضيها

وهذا الوقف أمر ممكن خارق للعادة كما كان لسليمان عليه الصلاة والسلام حيث عرضت عليه بالعشي الصافنات الجياد فكادت الشمس تغرب فضرب سوقها وأعناقها فرد الله الشمس حتى صلى العصر وسخر له الريح مكان الخيل وهذا بنص القرآن

وقد كان ليوشع عليه السلام حتى فتح القدس قبل دخول ليلة السبت, وقد كان لنبينا عليه الصلاة والسلام حين فاتت صلاة العصر من علي كما ذكر في كتب السير

What this means is that, it is not necessary that the time in which one will be able to perform four *raka`aat* must be present right now; it is sufficient for it to be assumed (i.e. that there will be this time). For example, this assumption could be fulfilled externally by Allaah Ta`aalaa stretching it so

that he (has sufficient time) to perform these four *raka`aat* therein. Otherwise, its fruit appears in *qadhaa*.

The author says:

"So much so that if a minor becomes *baaligh*, or a Kaafir becomes a Muslim, or a woman becomes pure from *haidh*, and this happens at the *aakhir-ul-waqt* (end of the appointed time, the last few moments), the Salaah becomes obligatory upon the person because of the assumed possibility of the time being stretched out such as by the pausing of the sun."

What he means by *aakhir-ul-waqt* is that amount of time in which a person will not be able to do anything except make the *takbeer-e-tahreemah* (opening *takbeer*). So, if these things become *waajib* in this time, then the Salaah becomes binding because of the possibility of the time being stretched by the halting of the sun. So, if this really does happen (i.e. the sun stands still), then he will perform the Salaah therein; otherwise, he will make *qadhaa*.

This pausing of the sun is something which is possible to happen as a miracle, such as what happened for Nabi Sulaymaan **عليه الصلاة والسلام** when (the horses) were displayed before him in the afternoon, well-trained horses of the highest breed (for Jihaad), and the sun almost set, so he struck the legs and necks of the horses, so Allaah returned the sun until Sulaymaan **عليه السلام** had performed `Asr Salaah, and he was given power over the wind in return for the horses, and this is according to the *nass* of the Qur'aan.

The same (i.e. pausing of the sun) had happened for Nabi Yoosha` **عليه السلام**, at the time of conquering al-Quds (Palestine), so that he was able to conquer it before Saturday night had entered. The same also happened for our Nabi **صلى الله عليه وسلم**, when Hadhrat `Ali **رضي الله عنه** missed Salaat-ul-`Asr, as was mentioned in the books of Seerah.

وهذا بخلاف الحج فإنه لم يعتبر فيه توهم الزاد والراحلة مع أن أكثر الناس يحجون بلا زاد وراحلة, لأن في اعتبار ذلك حرجاً عظيماً, ولو اعتبر ذلك لا تظهر ثمرته في وجوب القضاء, لأن الحج لا يقضى, وإنما تظهر في حق الإثم والإيصاء وذلك غير معقول

(وكامل وهو القدرة الميسرة للأداء)

عطف على قوله: مطلق, وهذا هو القسم الثاني, ويسمى هذا ميسرة لأنه جعل الأداء يسيراً سهلاً على المكلف, لا بمعنى أنه قد كان قبل ذلك عسيراً ثم يسره الله بعد ذلك بل بمعنى أنه أوجب من الإبتداء بطريق اليسر والسهولة, كما يقال: ضيِّق فم الرَكِيَّةِ, أي إجعله ضيقاً من الإبتداء, لا أنه كان واسعاً ثم يضيقه

وهذه القدرة شرط في أكثر العبادات المالية دون البدنية

(ودوام هذه القدرة شرط لدوام الواجب)

أي ما دامت هذه القدرة باقية يبقى الواجب, وإذا انتفى القدرة إنتفى الواجب

This is different to Hajj, because in Hajj, there is no assumption with regards to the provision and the conveyance, because most people perform Hajj without provision and conveyance, because considering that (i.e. provision and conveyance, when it comes to the obligation of Hajj) would cause a great difficulty, and if that were to be considered, its fruit (i.e. benefit) would not be apparent in the obligation of qadhaa, because there is no *qadhaa* for Hajj, but it only appears with regards to sin and leaving a *wasiyyat*, and that is not understood by the intellect.

The author says:

"And *kaamil*, and that is the capability which makes discharging (the duty) easy."

This is coupled to his statement, "*Mutlaq*," and this is the second type, and it is termed *muyassirah* because it makes the discharging of the duty easy upon the *mukallaf*. It does not mean that previously it had been difficult and then Allaah Ta`aalaa made it easy thereafter. Rather, it means that from the very beginning of when it was made obligatory, it was made obligatory in a way that is easy and simple. Like it is said: "Make tight the mouth of the well." i.e. make it tight/constricted from the very beginning (when you are digging the well). It does not mean that it was wide and thereafter he (the person) makes it tight.

This *qudrah* (capability) is a *shart* (condition) in most monetary `Ibaadaat, not the bodily `Ibaadaat.

The author says:

"The obligation remains so long as the *qudrah* (capability to perform it) remains."

Meaning, as long as this capability remains, the obligation remains, and when the *qudrah* is no longer there, the obligation leaves as well.

لأن الواجب كان ثاباً باليسر فإن بقي بدون القدرة يتبدل اليسر إلى العسر الصرف

(حتى تبطل الزكاة والعشر والخراج بهلاك المال)

تفريع على قوله: ودوام هذه القدرة, يعني أن الزكاة كانت واجبة بالقدرة الميسرة, لأن التمكن فيه يثبت بملك أصل المال فإذا اشترط النصاب الحولي علم أن فيه قدرة ميسرة, فإذا هلك النصاب بعد تمام الحول سقطت الزكاة إذ لو بقيت عليه لم يكن إلا غرماً

Because the obligation is affirmed with easiness, so if it remains without qudrah, then this easiness would change into difficulty.

The author says:

"So much so that Zakaah, `Ushr and Kharaaj fall away in the event of the destruction of the wealth."

This is a branching off from his statement: "The continuation of this qudrah." Meaning, Zakaah is *waajib* with the *qudrah* of *muyassirah*, because the capability in it is affirmed by possessing the the *asl* (root) of the wealth (i.e. the *nisaab* amount, free from any debts or needs he might have); thus, when having the *nisaab* for an entire lunar year was stipulated, it become known that in it is this *qudrah al-muyassirah*. So, if the *nisaab* is destroyed after a complete lunar year, the Zakaah falls away, because if it were to remain it would just be a debt upon him.

وعند الشافعي لا تسقط لتقرر الوجوب عليه بالتمكن, بخلاف ما إذا استهلكه, إذ تبقى عليه زجراً له على التعدي

وهذا إذا هلك كل النصاب, إذ لو هلك بعض النصاب تبقى بقسطه, لأن شرط النصاب في الإبتداء لم يكن إلا للغناء لا لليسر إذ أداء درهم من أربعين كأداء خمسة دراهم من مأتين, فإذا وجد الغناء ثم هلك البعض فاليسر في الباقي باق بقدر حصته

According to Imaam ash-Shaafi`ee, the obligation does not fall away because the obligation had become established upon him when he became capable (of paying it), and this is contrary to the case of him intentionally consuming (the *nisaab*), because if he does so, then the obligation (of paying it) remains upon him (according to the Ahnaaf as well) as a punishment upon him for transgressing (i.e. against the rights of those who were meant to receive it).

This is if the entire *nisaab* gets destroyed. As for if a part of the *nisaab* gets destroyed, then it remains with its portion, because the condition of *nisaab*, in the beginning, was for the rich, not for easiness, because the giving of one *dirham* from out of 40 *dirhams* is like giving 5 *dirhams* out of 200, so when richness is found and thereafter some gets destroyed, then the easiness in the remaining (part) remains proportionate to its portion.

وكذا العشر كان واجباً بالقدرة الميسرة, لأن الممكنة فيه كان بنفس الزراعة فإذا شرط قيام تسعة الأعشار عنده كان دليلاً على أنه يجب بطريق اليسر فإذا هلك الخارج كله أو بعضه بعد التمكن من التصدق يبطل العشر بحصته لأنه إسم إضافي يقتضي وجود الحصص الباقية

وكذا الخراج بالقدرة الميسرة لأنه يشترط فيه التمكن من الزراعة بنزول المطر ووجود آلات الحرث وغير ذلك فإذا عطل الأرض ولم يزرع يجب عليه الخراج للتمكن التقديري, وهذا مما يعرف ولا يفتى به لتجاسر الظلمة, بخلاف العشر فإنه يشترط فيه الخارج التحقيقي دون التقديري ولكن إذا لم يعطل وزرع الأرض, واصطلمت الزرع آفة يسقط عنه الخراج لأنه واجب بالقدرة الميسرة

Similarly, `Ushr becomes *waajib* when there is *al-qudrah al-muyassirah* (that amount which makes discharging the duty easy), because capability comes about by farming, cultivating the land. So, the fact there is a stipulation for nine-tenths to remain with him is a proof that it was made *waajib* in a way that is easy; thus, if the (`Ushr) is destroyed, all of it or part of it, after having had the capability of spending (discharging) it, then that tenth falls away, because it is connected to the other parts (and it is not obligatory) unless the other parts are there as well.

Similarly, Kharaaj (becomes obligatory) when there is that amount which makes (discharging it) easy (*al-qudrah al-muyassirah*), because there is the stipulation of the capability of farming due to the falling of rain and having the implements for farming, etc. So, if he just leaves the land alone without farming, Kharaaj still becomes waajib upon him because of the fact that he

does possess the ability (to farm, etc.) This is understood, but the Fatwaa is not given on this because it would lead to oppression, unlike `Ushr, because when it comes to `Ushr, then the actual (crops, etc.) that have been taken out (from the ground) and are present, is necessary (in order for it to be *waajib*), not simply (having the ability to plant). However, if he had not simply left the land alone but he had farmed, and sowed, but the crops are uprooted by some affliction, then in this case, Kharaaj falls away because it is only *waajib* when there is *al-qudrah al-muyassirah*.

(بخلاف الأولى حتى لا يسقط الحج وصدقة الفطر بهلاك المال)

بيان للممكنة بطريق المقابلة, يعني أن بقاء القدرة الممكنة ليس بشرط لبقاء الواجب, لأنه شرط محض, ولا يشترط بقاؤه كالشهود في باب النكاح, فإذا زالت القدرة الممكنة يبقى الواجب, ولهذا يبقى الحج وصدقة الفطر بهلاك المال لأن الحج ثبت بالقدرة الممكنة, لأن الزاد القليل والراحلة الواحدة أدنى ما يتمكن بها المرء من أداء الحج

وأما اليسر فإنما يقع بخدم ومراكب كثيرة وأعوان مختلفة ومال كثير, فإذا فاتت القدرة يبقى الحج على حاله, ويظهر ذلك في حق الإثم والإيصاء

وكذا صدقة الفطر بالقدرة الممكنة, ألا ترى أنه لم يشترط فيها حولان الحول والنماء, بل لو ملك النصاب في يوم العيد تجب عليه الصدقة, فإذا فات هذا النصاب يبقى عليه الواجب بحاله

وعند الشافعي كل من يملك قوتاً فاضلاً عن يومه تجب عليه الصدقة ولا يشترط ملك النصاب

قلنا: يلزم في هذا قلب الموضوع بأن يعطي اليوم الصدقة ثم يسأل منه غداً عين تلك الصدقة

The author says:

"This is contrary to the first (i.e. *al-qudrah al-mumakkinah*, or the amount which there is capability for), because Hajj and Sadaqat-ul-Fitr do not fall away on account of the destruction of wealth."

This is an explanation of capability by way of comparison, i.e. when it comes to these things, then it is not a condition that the capability remains in order for the obligation to remain, because it is purely a condition, thus its remaining is not necessary, like witnesses in the issue of *nikaah* (i.e. witnesses

are necessary in order to conclude a *nikaah*, but the remaining of those witnesses is not a condition for the marriage to remain, so much so that if the witnesses were to die, the *nikaah* of course remains intact). So, if *al-qudrah al-mumakkinah* (the ability that makes one capable of discharging the obligation) leaves, the obligation remains. For this reason, Hajj and Sadaqat-ul-Fitr remain *waajib* upon a person even if the wealth is destroyed, because Hajj was affirmed (obligated) when there was *al-qudrah al-mumakkinah*, because a little bit of provision and one conveyance is the least amount necessary by which a person becomes capable of discharging the Hajj. As for easiness (i.e. discharging it in a way that is easy), then that would only come about if he had lots of servants, lots of conveyances and rides, different helpers, lots of wealth, etc. So, when the qudrah (capability) is gone, the Hajj remains upon its state (of being obligatory), and this becomes apparent in the issue of sin and bequest.

Similarly, Sadaqat-ul-Fitr (becomes obligatory upon the person) when he has *al-qudrah al-mumakkinah* (that capability or that amount which makes him capable of discharging it). Do you not see that in Sadaqat-ul-Fitr, there is no stipulation of the passing of a lunar year and an increasing (of the wealth)? Rather, if he possesses the nisaab on the Day of `Eid, Sadaqat-ul-Fitr becomes obligatory upon him, and if that *nisaab* then leaves, the obligation remains upon him.

According to Imaam ash-Shaafi`ee, every person who possesses even this much food that, if he eats today there will be some food left over (i.e. and that is everything that he has), Sadaqat-ul-Fitr is *waajib* (obligatory) upon (even) him, and there is no stipulation of possessing the *nisaab*.

We (the Ahnaaf) say: "This would lead to the situations being reversed, because he would give the Sadaqat-ul-Fitr today and then he would need to ask that person tomorrow for that very same *sadaqah* (because he himself is poor and in need of it)."

ثم لما فرغ المصنف عن بيان حسن المأمور به شرع في بيان جوازه مناسبة وأطراداً فقال:

(وهل تثبت صفة الجواز للمأمور به إذا أتى به؟ قال بعض المتكلمين: لا)

يعني إختلفوا في أنه إذا أدى المأمور به مع رعاية الشرائط والأركان فهل يجوز لنا أن نحكم بمجرد إتيانه بالجواز؟ أو نتوقف عليه حتى يظهر دليل خارجي يدل على طهارة الماء وسائر الشرائط

After the author finished explaining the goodness of the commanded thing, he now commences his explanation of its *jawaaz* (i.e. being passed and falling away from the responsibility of the *mukallaf*), in conformity (to the subject matter) and in succession, so he said:

"Is the quality of *jawaaz* affirmed for the commanded thing if he (the person) comes with it (i.e. carries it out)? Some of the Mutakallimeen (logicians) said: No."

Meaning, they differed among themselves regarding whether, if he discharges the commanded thing along with taking into consideration its stipulations, its pillars, etc. then, can we judge it with *jawaaz* (i.e. that it is passed and no longer binding upon him) by his simply having executed it, or are we to exercise reservation on the issue until some external evidence becomes apparent to us which points out to the purity of the water and the other stipulations?

فقال بعض المتكلمين: لا نحكم به حتى نعلم من خارج أنه مستجمع للشرائط والأركان ألا ترى أن من أفسد حجه بالجماع قبل الوقوف فهو مأمور بالأداء شرعاً بالمشي على أفعاله مع أنه لا يجوز المؤدى إذا أداه فيقضي من قابل

(والصحيح عند الفقهاء إنه تثبت به صفة الجواز للمأمور به وانفتاء الكراهة)

أي المذهب الصحيح عندنا أنه تثبت بمجرد إيجاد الفعل صفة الجواز للمأمور به وهو حصول الإمتثال على ما كلف به وإلا يلزم تكليف ما لا يطاق ثم إذا ظهر الفساد بدليل مستقل بعده يعيده

وأما الحج فقد أداه بهذا الإحرام وفرغ عنه والأمر بحج صحيح في العام القابل بأمر مبتدء, وعند أبي بكر الرازي لا يثبت بمطلق الأمر إنتفاء الكراهة لأن عصر يومه مأمور بالأداء مع أنه مكروه شرعاً, والطواف محدثاً مأمور به مع أنه مكروه شرعاً

قلنا: ذلك الكراهة ليس في نفس المأمور بل لمعنى خارج وهو التشبيه بعبدة الشمس وكون الطائف محدثاً, ومثل هذا غير مضر

(وإذا عدمت صفة الوجوب للمأمور به لا تبقى صفة الجواز عندنا خلافاً للشافعي)

هذا بحث آخر متعلق بما مر من أن موجب الأمر هو الوجوب يعني أنه إذا نسخ الوجوب الثابت بالأمر فهل تبقى صفة الجواز الذي في ضمنه أم لا

Some of the logicians said: "No, we will not describe it with *jawaaz* (i.e. that it has been passed and the obligation has fallen from him) until he knows from (an) outside (proof) that he had gathered all of the stipulations and pillars. Do you not see that the one who spoils his Hajj by having intercourse prior to *Wuqoof* is commanded by the Sharee`ah to carry out the rest of the actions (of Hajj), even though these actions he will now carry out (after ruining his Hajj) will not be regarded as *jawaaz*, but rather, he will have to make *qadhaa* of it the following year.

The author says:

"The correct view according to the Fuqahaa is that when he does it, it is described with the quality of *jawaaz* and all reprehensibility falls away."

Meaning, the correct Madh-hab according to us (the Ahnaaf) is that by simply performing the (obligation), it gets the quality of *jawaaz* (i.e. it is passed) by simply having performed it, and that is by having carried out what was obligated upon the person, for otherwise it would be obligating upon him what is not capable. If thereafter there is evidence of its having been spoiled, he will repeat it.

As for Hajj, then he has carried it out with this *ihraam* and he has completed it, and the command for Hajj is valid in the following year with a new command. According to Imaam Abu Bakr ar-Raazi, the command alone does not cause the reprehensibility to disappear, because the `Asr of that day, he is commanded to perform by the Sharee`ah even if it is (in the) Makrooh (time), and *tawaaf* in the state of impurity (i.e. needing wudhoo) is commanded even though it is Makrooh according to the Sharee`ah.

We (the Ahnaaf) say: That reprehensibility is not in the commanded thing itself, but because of an external (factor) which is (in the case of performin `Asr in the Makrooh time) the resembling the worshippers of the sun, and the fact that the person performing *tawaaf* is impure (in need of wudhoo), and the likes of this does not harm.

The author says:

"When the quality of *jawaaz* is missing from the commanded thing, then the quality of *jawaaz* does not remain (either), according to us (Ahnaaf), contrary to ash-Shaafi`ee."

This is another discussion, connected to what was mentioned before, that what is made obligatory by a command is *wujoob* (obligation), i.e. when an obligation affirmed by a command is abrogated, then does the quality of *jawaaz* which it contain remain or not?

فقال الشافعي: تبقى صفة الجواز إستدلالاً بصوم عاشوراء فإنه قد كان فرضاً ثم نسخت فرضيته وبقي استحبابه الآن

وعندنا لا تبقى صفة الجواز الثابت في ضمن الوجوب كما أن قطع الأعضاء الخاطئة كان واجباً على بني إسرائيل وقد نسخ منا فرضيته وجوازه وهكذا القياس, وأما صوم عاشوراء فإنما يثبت جوازه الآن بنص آخر لا بذلك النص الموجب للأداء

وقيل: فائدة الخلاف بيننا وبينه يظهر في قوله عليه الصلاة السلام: مَنْ حَلَفَ عَلَى يَمِيْنٍ فَرَأَى غَيْرَهَا خَيْراً مِنْهَا فَلْيُكَفِّرْ يَمِيْنَهُ ثُمَّ لِيَأْتِ بِالَّذِيْ هُوَ خَيْرٌ

فإنه يدل على وجوب تقديم الكفارة على الحنث وقد نسخ وجوب تقديمها بالإجماع ولكن بقي جوازه عنده ولم يبق عندنا أصلاً

Imaam ash-Shaafi`ee رحمة الله عليه said: "The quality of *jawaaz* (permissibility, in this context) remains." And he used as evidence for this the fast of `Aashooraa, because it had been *fardh* and thereafter its *fardhiyyat* (compulsory status) was abrogated, but the *istihbaab* (recommendation) remained till now.

According to us (the Ahnaaf), the quality of *jawaaz* which is established inside of *wujoob* does not remain, like how it was *waajib* upon Bani Israa'eel to cut off the limbs that have committed sin, but (in our Ummah) both the *fardhiyyat* of this as well as its permissibility have been abrogated, and so on. As for the fast of `Aashooraa, then its permissibility is established now with a different *nass*, not with the *nass* which had made its fasting *waajib*.

It has been said that the benefit or purpose of the disagreement between us (the Ahnaaf) and him (Imaam ash-Shaafi`ee) is made apparent when it comes to the Hadeeth: "Whosoever takes an oath (to do something), but

then he sees that something else is better than it, then let him make *kaffaarah* for his oath and let him go to that which is better."

This Hadeeth points out to the obligation of first performing *kaffaarah* for an oath (that was broken), but then this was abrogated. According to him, the permissibility (*jawaaz*) remains, but according to us, it does not remain.

ثم لما فرغ المصنف عن بيان مباحث حسن المأمور به ملحقاته شرع في بيان تقسيمه إلى المطلق والموقت فقال:

(والأمر نوعان: مطلق عن الوقت)

أي أحدهما: أمر مطلق غير مقيد بوقت بفوت بفوته

(كالزكاة وصدقة الفطر)

فإنهما بعد وجود السبب أي ملك المال والرأس والشرط أي حولان الحول ويوم الفطر لا يتقيدان بوقت يفوتان بفوته بل كلما أدى يكون أداءاً لا قضاءاً وإن كان المستحب التعجيل

After the author completed his explanation on the discussions pertaining to the goodness of that which is commanded and what is connected to it, he now begins his explanation on dividing it into *mutlaq* (unrestricted) and *muwaqqat* (restricted to a time), so he says:

"*Amr* (commmand) is of two types: *mutlaq `anil waqt* (unrestricted by time)."

Meaning, one type is that which is unrestricted by time and thus does does not pass by the expiration of time.

The author says:

"Like Zakaah and Sadaqat-ul-Fitr."

Because both of those, after the *sabab* (cause, i.e. for obligation) is found, which is the possessing of the money, and a head (i.e. it is obligatory for himself and for every person under him, such as a wife and children), and the condition, which is the passing of one lunar year (i.e. the *nisaab* has been in his possession for one lunar year), and (it being) the Day of `Eid al-Fitr. It

is not restricted to a time thus expiring by the expiration of that time; rather, whenever he gives it, it is counted as *adaa* (discharging the duty) and not *qadhaa*, although what is *mustahabb* (recommended) is to make haste (in discharging it).

(وهو على التراخي خلافاً للكرخي)

أي هذا الأمر المطلق محمول عندنا على التراخي يعني لا يجب الفور في أدائه بل يسع تأخيره, وعند الكرخي لابد فيه من الفور إحتياطاً لأمر العبادة بمعنى أنه يأثم بالتأخير لا بمعنى أنه يصير قاضياً

The author says:

"It can be delayed, contrary to al-Karkhi."

Meaning, this command (for the discharging of Sadaqat-ul-Fitr), according to us, is one that can be delayed, i.e. it is not *waajib* to discharge it immediately, but rather, there is scope for delaying it, but according to Imaam al-Karkhi **رحمة الله عليه**, it has to be discharged immediately, as a precaution because it is an `Ibaadah. What he means by this is that the person is sinful if he delays it. He does not mean that if he delays it that it is counted as *qadhaa*.

وعندنا لا يأثم إلا في آخر العمر أو حين إجراك علامات الموت ولم يؤد فيه, ودليلنا هو ما أشار إليه بقوله: لئلا يعود على موضوعه بالنقض, يعني موضوع الأمر المطلق كان هو التيسير والتسهيل فلو كان محمولاً على الفول لعاد على موضوعه بالنقض ويكون مناقضاً للموضوع

(ومقيداً به)

أي الثاني أمر مقيد بالوقت وهو أربعة أنواع لأنه

(إما أن يكون الوقت ظرفاً للمؤدى وشرطاً للأداء وسبباً للوجوب)

فهو النوع الأول

والمراد بالظرف أن لا يكون معياراً له بل يفضل عنه, والمراد بالشرط أن لا يصح المأمور به قبل وجوده ويفوت بفوته, والمراد بالسبب أن لهذا الوقت تأثيراً في وجوب المأمور به وإن كان مالمؤثر الحقيقي في كل شيء هو الله تعالى ولكن يضاف الوجوب في الظاهر إلى الوقت لأن في كل لمحة وصول نعمة من الله تعالى إلى جانب العبد وهو يقتضي الشكر في كل ساعة

According to us, the person does not become sinful except if it is at the end of his life or he has reached the signs of death and he still has not discharged it. Our proof for this is what (the author implied) by saying: "So that it does not contradict its purpose." What he means by this is that, the purpose of a command being *mutlaq* (unrestricted by time) is so that there is easiness and simplicity, so if it were to require being discharged immediately, then it would contradict its subject or purpose (i.e. the easiness would not be there).

The author says:

"And restricted by it (time)."

Meaning, the second type of *amr* is that which is *muqayyad bil-waqt* (restricted by time), and it is of four types, because:

"Either (it is such that) the time acts as a container (or time-frame) in which it must be discharged, and a condition for its discharge, and a cause for its (the command) becoming *waajib* (obligatory)."

That is the first type (of the four types).

The meaning of *zharf* (container, or time-frame) here is that it is not a *mi`yaar* for it (i.e. it is not such that, the action is done within it only and the time is restricted to this action) but rather (the time) is more than it. The meaning of *shart* (condition) is that the commanded thing is invalid before it (the *shart*) has come about and that it (the command) leaves if it (the *shart*) leaves. The meaning of *sabab* (cause) is that this (particular) time has an effect on making the commanded thing obligatory upon the person, even though the Real Cause in every thing is Allaah Ta`aalaa (He Himself makes it waajib), but the *wujoob* has been linked on the outward sense to time, because at every moment in time, some Ni`mah from Allaah Ta`aalaa is reached the bondsman, and this necessitates *shukr* (gratitude unto Allaah Ta`aalaa) in every moment.

وإنما خص هذه الأوقات المعينة بالعبادات لعظمتها وتجدد النعم فيها ولئلا يفضي إلى الحرج في تحصيل المعاش إن استغرق الوقت العبادة

(كوقت الصلاة)

فإن الوقت فيها يفضل عن الأداء إذا أدى على حسب حسب السنة من غير إفراط فيكون ظرفا ولا يصح الأداء قبل دخول الوقت يفوت بفوته فيكون شرطاً ويختلف الأداء باختلاف صفة الوقت صحةً وكراهةً فيكون سبباً للوجوب

وتقديم المشروط على الشرط جائز إذا كان الشرط شرطاً للوجوب كما في حولان الحول للزكاة وأما إذا كان الشرط شرطاً للجواز لا يصح تقديم المشروط عليه كسائل شرائط الصلاة. وتقديم المسبب على السبب لا يجوز أصلاً وهاهنا لما اجتمعت الشرطية والسببية فلا جرم أن لا يجوز التقديم على الوقت

These particular times have only been specified for `Ibaadaah because of their honour and to renewal of the *Ni`mats* in it and so that it does not lead to difficulty in attaining livelihood by all of the time (in a person's life) being taken up by `Ibaadah.

The author says:

"Like the time of Salaah."

Because the time (for each Salaah) is such that, after the discharge of the Salaah there is still time left (i.e. this is the meaning of the *zharf* not acting as a *mi`yaar*, but rather, that it is "more than it", i.e. it gives the person enough time in which to discharge it and have time left over) if it is discharged according to the *sunnah* without going to excess, and thus (this is the meaning of it) being a *zharf*. It is not valid to perform it before the entry of its time, and with the expiry of its time the action cannot be done, so this is the (meaning of it being) a *shart* (condition). The discharging of it differs with the differing of the quality of the time, in terms of validity and reprehensibility (i.e. if it is not in the right time, it is invalid, or *makrooh*, etc.) so (this is the meaning of it) being a *sabab* (cause) for the *wujoob*.

Putting the *mashroot* (that which has been stipulated) in front of the *shart* (condition; stipulation) is permissible if the *shart* is such that it is a *shart*

(condition or stipulation) for the *wujoob* (obligation), like in the case of the passing of a lunar year when it comes to Zakaah. As for if the *shart* is a *shart* for *jawaaz* (permissibility), then the *mashroot* cannot be put in front of it, like with the rest of the conditions (*sharaa'it*) of Salaah. Putting the *musabbab* (that which has been restricted by a *sabab* or cause) in front of the *sabab* (cause) is not valid, as a rule, and over here (as well) because there is both *shartiyyah* (conditionality) and *sababiyyah* (causality), so obviously it cannot be put in front of the time.

ثم هاهنا شيئان: نفس الوجوب, ووجوب الأداء, فنفس الوجوب سببه الحقيقي هو الإيجاب القديم وسببه الظاهري وهو الوقت أقيم مقامه, ووجوب الأداء سببه الحقيقي تعلق الطلب بالفعل وسببه الظاهري وهو الأمر أقيم مقامه

ثم الظرفية والسببية لا تجتمعان بحسب الظاهر لأنه إن أدى في الوقت لا يكون سبباً لأن السبب يجب أن يقدم على المسبب وإن لم يؤد في الوقت لا يكون ظرفاً إذ الظرف ما يؤدى فيه لا بعده فلهذا قالوا إن الظرف هو جميع الوقت, والشرط هو مطلق الوقت, والسبب هو الجزء الأول المتصل بالأداء قبيل الشروع في الأداء

Then, there are two things here (i.e. with regards to Salaah): *nafs al-wujoob* (the obligation itself), and *wujoob al-adaa* (the obligation of discharging). With *nafs al-wujoob*, its true, literal *sabab* (cause) is (that Allaah Ta`aalaa) made it obligatory, and its outward, apparent *sabab* (cause), which is the (appointed) time, has been put in place of it. With *wujoob al-adaa* (the obligation of discharging), its true, literal *sabab* (cause) is the seeking being connected with the action (i.e. of Salaah), and its outward, apparent *sabab* (cause), which is the *amr* (command), has been put in its place.

Then, *zharfiyyah* and *sababiyyah* do not join just on the outward alone, because if it (Salaah) is discharged in the (appointed time), then it will not be a *sabab*, because a *sabab* always has to come before the *musabbab* (thing which has been attached to a cause), and if it (Salaah) is not discharged in the (appointed time), then it (the time) will not be a *zharf*, because *zharf* is what is discharged in it, not after it. For this reason, they said that *zharf* refers to the entirety of the time (i.e. the entirety of the time-frame in which a particular Salaah could be performed), and the *shart* is the time itself, and the *sabab* is the first portion (of the time) which is connected to the discharging just prior to the commencing of the discharging (of the Salaah).

والكل في القضاء وهو أربع أنواع وقد فصله المصنف بقوله:

(وهو إما أن يضاف إلى الجزء الأول أو إلى ما يلي إبتداء الشروع أو إلى الجزء الناقص عند ضيق الوقت أو إلى جملة الوقت)

يعني أن الأصل أن كل مسبب متصل بسببه فإن أديت الصلاة في أول الوقت يكون الجزء السابق على التحريمة وهو الجزء الذي لا يتجزأ سبباً لوجوب الصلاة فإن لم يؤد في أول الوقت تنتقل السببية إلى الأجزاء التي بعده, فيضاف الوجوب إلى كل ما يلي إبتداء الشروع من الأجزاء الصحيحة

فإن لم يؤد في الأجزاء الصحيحة حتى ضاق الوقت فحينئذ يضاف الوجوب إلى الجزء الناقص عند ضيق الوقت وهذا لا يتصور إلى في العصر فإن في غيره من الصلاة كل الأجزاء صحيحة. وهذا الجزء الناقص مقدار ما يسع التحريمة يعندنا ومقدار ما يؤدى فيه أربع ركعات عند زفر رحمه الله فلا تنتقل السببية عنده إلى ما بعده لأنه خلاف الأمر والشرع, فإن كان هذا الجزء الأخير كاملاً كما في صلاة الفجر وجبت كاملة فإن اعترض الفساد بالطلوع بطلت الصلاة ويحكم بالإستئناف. وإن كان هذا الجزء ناقصاً كما في صلاة العصر وجبت ناقصة فإن اعترض الفساد بالغروب لم تفسد الصلاة لأنه أداها كما وجبت

And the entire (time, i.e. the *sabab* is the entire time) in the (case of) *qadhaa*, and it is four types, and the author explained it by saying:

"It is either (such that) it is connected (i.e. its *wujoob* is connected) to the first part (i.e. the first moments of the time), or (it is connected) to what just follows the beginning of the commencing (of the time), or to the deficient portion in the case of constrictedness of time, or to the entire time altogether."

Meaning, the *asl* (rule) is that every *musabbab* is connected to its *sabab*, so if the Salaah is discharged in the *awwal waqt* (beginning of the appointed time), the the previous part before the (*takbeer-e-*) *tahreemah*, and which is the part that does not split (into other parts), will be the *sabab* (cause) for the obligation of Salaah. Then, if he (the person) does not discharge the Salaah in the *awwal waqt*, the *sababiyyah* (the cause for the *wujoob*) transfers to the next parts (of the appointed time), and thus the *wujoob* will become connected to everything which is after the beginning of the commencing (of the time), of the parts (i.e. parts of time) that are valid. Then, if he still does not discharge it in the parts (i.e. in the times) that are valid, so much so that

the time starts to run out and become constricted, then in this case, the *wujoob* will become connected to the deficient part (i.e. the *makrooh* time), but this cannot come about except in the case of `Asr Salaah, because in the rest of the Salaats, all of the parts (of time) are valid. This deficient part (of time), its length is such that one would be able to perform the *takbeer-e-tahreemah in it*. This is according to us. According to Imaam Zufar رحمة الله عليه, it is long enough to perform in it four *raka`aat*, so according to him, the *sababiyyah* does not transfer to what comes after it, because it is contrary to the command and the Sharee`ah. If this last part (of time) is *kaamil* (complete), as is the case in Fajr Salaah, then it is *waajib* in full, but if it is hampered by a corruption (of the Salaah), which is the rising of the sun, then the Salaah is nullified and the ruling is that it must be repeated. But, if this part was a deficient part, as is the case in `Asr Salaah, then it will become *waajib* in a deficient (state as well), and thus if it gets hampered by a corruption (of the Salaah), which is the setting of the sun, the Salaah is not spoiled, because the person has performed it in the manner that it had become *waajib*.

وكان قوله إلى ما يلي إبتداء الشروع شاملاً للجزء الأول وللجزء الناقص, لأن الجزء الأول والجزء الناقص إنما يصير سبباً لوجوب الصلاة إذا شرع فيه, وأما إذا لم يشرع فيه لم يصر سبباً فينبغي أن يقتصر عليه إلا أن الجزء الأول لاهتمام شأنه عند الجمهور, صرح به حتى ذهب كل الأئمة سوى أبي حنيفة رحمه الله إلى استحباب الأداء فيه, وكذا الجزء الناقص لأجل خلافية زفر رحمه الله فيه صرح بذكره

The statement of the author, viz., "What just follows the beginning of the commencement (of the Salaah) encompasses both the first part (of the time-frame) as well as the deficient (i.e. last, *makrooh*) part (of the time-frame), because the first part and the deficient part only become a *sabab* for the *wujoob* (obligation) of Salaah if he commences (the Salaah). If he does not commence (the Salaah), then it does not become a *sabab* (cause), so it would be fitting that he could restrict himself to it (i.e. to any part of the time); however, because of the immense important of the first part (i.e. the *awwal waqt*) according to the majority of the `Ulamaa, all of the A'immah except for Imaam Abu Haneefah رحمة الله عليه held the view that it is *mustahabb* for perform the Salaah in the *awwal waqt* (i.e. as soon as the time comes in, or, the beginning of the time-zone.) The same is the case with the deficient part (i.e. the *makrooh* time), because of the disagreement of Imaam Zufar رحمة الله عليه regarding it, which he mentioned.

وهذا كله إذا أدى الصلاة في الوقت وأما إذا فاتت الصلاة عن الوقت فحينئذ يضاف الوجوب إلى جملة الوقت لانه قد زال المانع عن جعل كل الوقت سبباً وهو كونه ظرفاً للصلاة لأنه لم يبق الوقت. فلما كان كل الوقت سبباً للقضاء وهو كامل فحينئذ تجب الصلاة كاملة فلا يتأدى إلا في الوقت الكامل وإليه أشار بقوله:

(فلهذا لا يتأدى عصر أمسه في الوقت الناقص بخلاف عصر يومه)
يعني فلأجل أن سبب وجوب عصر اليوم هو الوقت الناقص إذا لم يؤده في الأجزاء الصحيحة وسبب وجوب عصر الأمس هو كل الوقت الفائت الكامل. قلنا: لا يتأدى عصر الأمس في الوقت الناقص, لأنه لما فاتت الصلاة عن الوقت كان كل الوقت سبباً وهو كامل باعتبار أكثر أجزائه, وإن كان يشتمل على الوقت الناقص فلا يصح قضاؤه إلا في الوقت الكامل

ويتأدى عصر يومه في الوقت الناقص لأنه لما لم يؤده في الوقت الأول واتصل شروعه في الجزء الناقص كان هو سبباً لوجوبه فيؤدى ناقصاً كما وجب

All of this applies if he had discharged the Salaah in the (appointed) time. As for if the time for Salaah had expired, then in that case, the *wujoob* will become attached to the entire of the time-zone (of the Salaah), because now there is no preventer to prevent all of the time becoming a *sabab* (for the *wujoob*), because it is a *zharf* (container or vessel) for the Salaah, because the time no longer remains. Now, if the entirety of the time is a *sabab* for qadhaa (of the Salaah), and it is *kaamil* (complete), then in this case, the Salaah becomes *waajib* in a *kaamil* (complete) form as well, and thus it must be discharged in the time that is *kaamil* (complete), and the author had alluded to this by saying:

"For this reason, the `Asr Salaah of yesterday is not to be discharged in the deficient time (i.e. in the *makrooh* time), contrary to the `Asr Salaah of today."

What he means by this is that, because the *sabab* (cause) for the *wujoob* (obligation) of the `Asr of today is the deficient time (i.e. even though it is the *makrooh* time, because he has not yet performed the Salaah, it acts as a *sabab* or cause for the Salaah becoming obligatory upon him) because he had not performed the Salaah in the valid parts (of the time-zone). The *sabab* for the *wujoob* of the `Asr Salaah of yesterday is the entirety of (yesterday's time-zone of `Asr) which had passed and in a complete (*kaamil*) form. Thus, we

say: "The `Asr Salaah of yesterday must not be discharged in the deficient (*makrooh*) time, because, after the Salaah time had expired, the entire time (the time-zone as a whole) became a *sabab* (for *qadhaa*), and it is *kaamil* due to taking into consideraion all of its parts, even though it includes the *naaqis* (deficient, i.e. *makrooh*) time as well. It is not valid to make *qadhaa* of it except in the *kaamil* (complete) time.

On the other hand, the `Asr Salaah of today will be discharged even in the deficient (*makrooh*) time, because, he had not discharged the Salaah in the *awwal waqt*, and thus its commencement has become connected to the deficient (time), so that then becomes the *sabab* for its *wujoob*, so it is performed in a *naaqis* (deficient) way as it had become *waajib* (in a deficient way).

ولا يقال: إن من شرع في صلاة العصر في أول الوقت ثم مدها بالتعديل والتطويل إلى أن غربت الشمس فإن هذه الصلاة قد تمت ناقصة وكان شروعها في الوقت الكامل, لأنا نقول إنما يلزم هذا لضرورة ابتنائه على العزيمة, فإن العزيمة في كل صلاة أن تؤدى في تمام الوقت فالإحتراز عن الكراهة مع الإقبال على العزيمة مما لا يجتمع قط فيجعل هذا القدر من الكراهة عفواً

(ومن حكمه إشتراط نية التعيين)

أي من حكم هذا القسم الذي هو ظرف إشتراط نية التعيين بأن يقول نويت أن أصلي ظهر اليوم ولا يصح بمطلق النية لأنه لما كان الوقت ظرفاً صالحاً للوقتي وغيره من النوافل والقضاء يجب أن يعين النية

(ولا يسقط لضيق الوقت)

أي إذا ضاق الوقت عن التوسعة بسبب تقصيره إلى آخر الوقت أو بسبب نومه أو نسيانه لا يسقط التعيين عن ذمته لأنه إنما جاء الضيق بسبب العارض وفي الأصل كان سعة

(ولا يتعين بالتعيين إلا بالأداء)

أي إن عين أحد أول الوقت أو أوسطه أو آخره لا يتعين بتعيينه اللساني أو القصدي إلا إذا أدى, ففي أي وقت أدى يكون ذلك الوقت متعيناً وإن لم يؤد فيما عينه بل في جزء آخر لا يسمى قضاءاً

(كالحانث في اليمين)

فإنه يتخير في كفارتها بين ثلثة أشياء, إطعام عشرة مساكين أو كسوتهم أو تحرير رقبة

It is not to be said that, the one who commences his `Asr Salaah in the *awwal waqt* and then prolongs it so long that the sun sets, that this Salaah has been completed in a *naaqis* (deficient) way and his commencement was in the *kaamil* (complete) time. Because, we say: this is so because of the necessity of him having built (his Salaah) upon the *`azeemah*, and the *`azeemah* in every Salaah is that it be discharged in the entirety of the time-zone; thus, abstaining from the *karaahah* (reprehensibility) and going towards the *`azeemah* is something that can never go together, so this portion of the *karaahah* (i.e. the last portion of the time-zone, which is the *makrooh* time) is pardoned.

The author says:

"And from its ruling is the stipulating of the *niyyah* of specifying."

Meaning, from the ruling of this type, which is *zharf*, is the stipulating of the *niyyah* of *ta`yeen* (specifying), by the person saying: "I intend (*nawaytu*) to perform Salaat azh-Zhuhr of today." It is not valid for him to just make an unrestricted *niyyah* (i.e. for him to say, "I intend to perform Salaah.") This is so because the time-zone is a *zharf* (container; vessel) which can have both the actual Salaah (of that time-zone, which is Zhuhr in this case) as well as other, *nawaafil* (optional) Salaats and *qadhaa*, (therefore, if he does not make a *niyyah* specifying what Salaah he is making, it will not be valid.) Therefore, it is *waajib* for him to specify in his *niyyah* (intention).

The author says:

"It does not fall away because of the narrowness of the time."

Meaning, when the time-zone or time-frame becomes narrow because of him having restricted it to the last part of the (time-zone), or because he had been sleeping (and only woke up now when there is a little time left), or

because he had forgotten (and only realised when there is a little time left), still it is his responsibility to do *ta`yeen* in his *niyyah* (i.e. to specify what Salaah he is performing), because the narrowness (of the time) has come about because of some extenuating factor, but the asl is that there is spaciousness (in the time, to perform the actual *fardh*, or *nawaafil*, or *qadhaa*).

The author says:

"And it does not become specified with his specifying except if he discharges it."

What he means by this is that, if the person makes a verbal (as well as an intention in the heart) intention at the beginning, middle or end of the time-zone, that he is performing such-and-such Salaah, then no specification has taken place unless he actually discharges (that Salaah which he had specified in his intention). In whichever time (from the time-zone) he discharges the Salaah, that time will be the specified time, even if he does not discharge it in the time that he had specified, but rather, he had discharged it (even) at the end of the time-zone, it will not be termed *qadhaa*.

The author says:

"Like the one who breaks his oath."

Because, the person who breaks his oath gets to choose one of three things: feeding 10 poor people, or clothing them, or freeing a slave.

فإن عين واحداً منها باللسان أو بالقلب لا يتعين عند الله تعالى ما لم يؤده, فإذا أدى صار متعيناً وإن أدى غير ما عينه أولاً يكون مؤدياً

(أو يكون معياراً له وسبباً لوجوبه كشهر رمضان)

عطف على قوله: إما أن يكون ظرفاً, وهو النوع الثاني من الأنواع الأربعة للموقت, ولا فرق بينه وبين القسم الأول إلا أن يكون الأول ظرفاً وهذا معياراً. والمعيار هو الذي استوعب الوقت ولا يفضل عنه فيطول بطوله ويقصر بقصره, فإن الصوم يطول بطول النهار ويقصر بقصره, فيكون معياراً وهو سبب لوجوبه أيضاً وقد اختلف فيه, فقيل:

الشهر كله سبب للصوم

وقيل: الأيام فقط دون الليالي
ثم قيل: الجزء الأول من الشهر سبب لوجوب صوم تمام الشهر
وقيل: أول كل يوم سبب لصومه على حدة
وقد ذكرنا كله في التفسير الأحمدي

ولم يذكر هاهنا كونه شرطاً للأداء مع أنه شرط للأداء أيضاً إكتفاءاً بالقرائن

ثم فرع على كونه معياراً فقال:

(فيصير غيره منفياً)

أي لما كان شهر رمضان معياراً للصوم يصير غير الفرض منفياً في رمضان كما قال عليه الصلاة والسلام: إِذَا انْسَلَخَ شَعْبَانُ فَلَا صَوْمَ إِلَّا عَنْ رَمَضَانَ

If he specifies one of the three verbally or in his heart, it is not specified to Allaah Ta`aalaa so long as he has not discharged it. Once he has discharged it, it now becomes *muta`ayyan* (specified). If he discharges other than what he had specified first (i.e. such as by specifying feeding but then freeing a slave instead), it is still discharged.

The author says:

"Or, it is a *mi`yaar* (container) for it and a *sabab* (cause) for its *wujoob* (obligation), like the month of Ramadhaan."

This is coupled to his earlier statement: "Either it is a *zharf*..." This is the second type from the four types of *muwaqqat* (something restricted by time), and there is no difference between it and the first type except that the first type if a *zharf* and this type is a *mi`yaar*, and a *mi`yaar* is such a thing which completely encompasses the time and is not in excess of it, so it lengthens with its lengthening and shortens with its shortening, because fasting lengthens with the lengthening of the day and shortens with the shortening (of the day), and thus it is a *mi`yaar* for it and a *sabab* for its *wujoob* also, and there is disagreement concerning it, so it has been said: "The entire month (of Ramadhaan) is a *sabab* for the *wujoob* of fasting."

It has also been said: "Only the days are a *sabab*, not the nights."

It has also been said: "The first part of the month acts as a *sabab* for the obligation of fasting the rest of the month."

It has also been said: "The beginning of each day (of Ramadhaan) acts as a *sabab* for the fasting of just that day."

We have mentioned all of that in *at-Tafseer al-Ahmadi*.

Its being a *shart* (condition) for the discharging has not been mentioned here despite the fact that it is also a *shart* for the *adaa* (discharging), (and the reason it has not been mentioned) is because the similarities are sufficient (i.e. it is already known).

Thereafter, the author branches off into the issue of it being a *mi`yaar*, so he says:

"So other than it becomes negated."

Meaning, because the month of Ramadhaan acts as a *mi`yaar* for fasting, then, other than the *fardh* is negated in Ramadhaan, like Rasoolullaah **صلى الله عليه وسلم** said: "When the month of Sha`baan ends, then there is no fast except (that of) Ramadhaan."

ولا تشترط نية التعيين لأن يقول: بصوم غد نويت بفرض رمضان, لأن هذا التعيين إنما شرع في الصلاة لكون وقتها ظرفاً صالحاً لغيرها أيضاً وهو منتف هاهنا

وقال الشافعي رحمه الله: لابد من تعيين النية قياساً على الصلاة

There is no stipulation (when it comes to fasting in Ramadhaan) that a person must do *ta`yeen* (specifying), such as by saying: "I intend to fast tomorrow, for the fardh of Ramadhaan." This is because, this kind of *ta`yeen* (specification) was only legislated when it comes to Salaah because with Salaah, the *waqt* (time-zone) is a *zharf*, and thus it (is large enough) to encompass both the (*fardh* Salaah) as well as other than it (other *nawaafil* or *qadhaa*, so therefore specifying is necessary), but that is not the case here (because Ramadhaan acts as a *mi`yaar*, so for the entire month it is not possible to fast other than the fast of Ramadhaan, so there is no need to specify because there is no possibility of performing a different fast anyway).

Imaam ash-Shaafi`ee رحمة الله عليه said: "*Ta`yeen* (specifying) is necessary in the *niyyah* (for fasting as well)." (His view was based on) *qiyaas* (analogical deduction) on the issue of Salaah.

وقال زفر رحمه الله: لا حاجة إلى أصل النية أيضاً لأنه متعين بتعيين الله تعالى

وخير الأمور أوسطها وهو فيما قلنا

(فيصاب بمطلق الإسم ومع الخطأ في الوصف)

تفريع على سبق أي فيصاب صوم رمضان بمطلق إسم الصوم بأن يقول: نويت الصوم, ومع الخطأ في الوصف أيضاً بأن ينوي النفل أو واجباً آخر فلا يكون إلا عن رمضان

والمراد بهذا الخطأ ضد الصواب لا ضد العمد, فإن العامد والمخطئ سواء في هذا الحكم (إلا في المسافر ينوي واجباً آخر عند أبي حنيفة رحمه الله)

إستثناء من مقدر أي يصاب رمضان مع الخطأ في الوصف في حق كل واحد إلا في المسافر حال كونه ينوي في رمضان واجباً آخر من القضاء والكفارة, فإنه يقع عما نوى لا عن رمضان عند أبي حنيفة رحمه الله, لأن وجوب الأداء لما سقط في حقه يتخير بعد ذلك بين الأكل وبين واجب آخر

Imaam Zufar رحمة الله عليه said: "There is no need for even an intention (*niyyah*), because it has already been specified by Allaah Ta`aalaa."

The best of matters is the middle path, and it (the middle path) is in what we have said.

The author says:

"So he will reach (the fast of Ramadhaan) simply by using the word, and (even) with an error in the description."

This is a branching off with regards to something mentioned earlier. What he means is that, the person reaches the fast of Ramadhaan simply by (in his intention) using the word sawm (fasting), such as by saying, "I intend to

fast." He also (reaches the fast of Ramadhaan) even if there was an error in his description, such as by him making *niyyah* for a *nafl* or a different *waajib*. Even if he does so, the fast will still be regarded as a fast of Ramadhaan. The meaning by error here is the opposite of correct, not the opposite of intentionally (doing something), because the one who erred and the one who did so intentionally is the same in this ruling (i.e. whether a person had made the wrong *niyyah* unintentionally or intentionally, it still gets counted as a fast of Ramadhaan).

The author says:

"Except for the traveller who intends a different *waajib*, according to Abu Hanefeah **رحمة الله عليه**."

What he means by this is that, even if a person makes an error in his description, it is still counted as a fast from Ramadhaan, and this is the case with every single person except for the *musaafir* (traveller), because he can intend - in the month of Ramadhaan - a fast from a different *waajib* or a *qadhaa* fast or a *kaffaarah*, and it will be counted as what he had intended and not as a fast from Ramadhaan, according to Imaam Abu Haneefah **رحمة الله عليه**. This is so because the obligation of discharging (the fasting of Ramadhaan) has fallen (from his responsibility, on account of him being a traveller) and thus he gets the choice between eating or fasting a different *waajib* (fast).

وعندهما لا يصح لأن شهود شهر موجود في حقه كالمقيم وإنما رخص له بالإفطار لليسر فإذا لم يترخص عاد حكمه إلى الأصل فلا يقع عما نوى بل عن رمضان وهذا المسافر متلبس

(بخلاف المريض)

فإنه إن نوى نفلاً أو واجباً آخر لم يقع عما نوى لأن رخصته متعلقة بحقيقة العجز لا العجز التقديري, فإذا صام وتحمل المحنة على نفسه علم أنه لم يكن عاجزاً فيقع عن رمضان وهذا هو المختار

وقيل: رخصته أيضاً متعلقة بالعجز التقديري وهو خوف زيادة المرض فهو كالمسافر. وقيل في التطبيق بينهما: أن المريض الذي يضر به الصوم كمرض حمى البرد ووجع العين فرخصته متعلقة

بخوف ازدياد المرض والعجز التقديري, والمريض الذي لا يضر به الصوم كمرض امتلاء البطن فرخصته متعلقة بحقيقة العجز, فإذا صام هذا المريض ظهر أنه لم يكن له عجز حقيقي فلا يقع عما نوى بل عن رمضان

(وفي النفل عنه روايتان)

متعلق بقوله ينوي واجباً آخر أي في صوم النفل للمسافر عن أبي حنيفة رحمه الله روايتان: في وراية الحسن يقع عما نوى وفي رواية بن سماعة عن رمضان وهذا الإختلاف مبني على دليلين لأبي حنيفة رحمه الله نقلاً عنه

فالدليل الأول أنه لما رخصه الله تعالى بالفطر كان رمضان في حقه كشعبان وفي شعبان يصح النفل فكذا هاهنا, والدليل الثاني أنه لما رخص له بالفطر فيصرفه إلى منافع بدنه بالإستراحة فلأن يصرفه إلى منافع دينه وهو قضاء ما وجب عليه من القضاء والكفارة أولى لأنه إن مات في هذا الرمضان لم يعاقب لأجل رمضان ويعاقب بسبب القضاء والكفارة والنفل ليس بأهم له لا في مصالح دينه ولا في مصالح دنياه

According to Imaam Abu Yusuf and Imaam Muhammad, it is not valid because the "witnessing of the month" is still present in his case, just as it is for the *muqeem* (resident). The only reason he has been offered a *rukhsah* (concession) to eat is for the sake of making it easy for him, so if he does not take this *rukhsah* (concession), then the original ruling returns, and thus his fast will be regarded as a fast from Ramadhaan and not for what he had intended, and this traveller is guilty.

The author says:

"Contrary to the sick person."

Because if a sick person intends - in Ramadhaan - a *nafl* fast or a different *waajib* fast, his fast will not be regarded as that which he had intended, because his *rukhsah* (concession) to not fast is connected to a real incapability (on account of illness) not an assumed (or suspected) illness. Thus, if he fasts and takes it upon himself, it becomes known that he was not incapable (of fasting), and thus his fast is regarded as a fast of Ramadhaan, and this is the chosen view.

The author says:

"There are two narrations pertaining to (a sick person) performing *nafl*."

This is connected to his statement: "If he intends a different *waajib*." Meaning, with regards to a *musaafir* (traveller) intending a *nafl* (fast), there are two views narrated from Imaam Abu Haneefah رحمة الله عليه. In the *riwaayat* (narration) of al-Hasan (ibn Ziyaad al-Lu'lu'i), it is mentioned that (if a traveller makes *niyyat* for a *nafl* fast) his fast will fall according to what he had intended (i.e. it will be regarded as a *nafl* fast). According to the *riwaayat* of ibn Samaa`ah, his fast (even if he had intended *nafl*) will be regarded as a fast from Ramadhaan. This difference of opinion is based on two different proofs which have been narrated from Imaam Abu Haneefah رحمة الله عليه.

The first *daleel* (proof) is that, because Allaah Ta`aalaa gave this person a *rukhsah* (concession) to eat, then Ramadhaan to (this person) becomes like Sha`baan, and in Sha`baan, a *nafl* fast is valid. The second *daleel* (proof) is that the reason he has been given *rukhsah* (concession) to eat (instead of fast) is for the sake of bodily benefits, by resting. Then, for him to attain Deeni benefits is even better, such as by him doing *qadhaa* of those fasts which are binding upon him, or *kaffaarah*, because if he were to die during this Ramadhaan, he will not be punished for having not fasted it, but he will be punished on account of those *qadhaa* fasts and *kaffaarah* which he had not performed. *Nafl*, however, is not more important than the Deeni benefits (which he would get by doing *qadhaa* fasts or *kaffaarah*), nor is it more important (in this state of his) than his worldly benefits (by resting, so *nafl* will not be performed).

(أو يكون معياراً له لا سبباً كقضاء رمضان)

عطف على السابق وهو النوع الثالث من الأنواع الأربعة للموقت فإن وقت القضاء معيار بلا شبهة وسبب وجوبه هو شهود الشهر السابق لا هذه الأيام فإن سبب القضاء هو سبب الأداء ولم يعلم حال شرطيته والظاهر العدم فإنه إذا لم يعلم تعيين الوقت فأي وقت يكون شرطه

ووقع في بعض النسخ (والنذر المطلق) فإن وقته معيار له وليس سبباً لوجوبه وإنما السبب هو النذر. وأما النذر المعين فقيل: إنه شريك للنذر المطلق في هذا المعنى وإنما يخالفه في بعض أحكامه وهو اشتراط نية التعيين في المطلق وعدم احتمال الفوات ولذا قيده به. والظاهر أن النذر

المعين شريك لرمضان في كون الأيام معياراً له وسبباً للوجوب بعدما أوجب على نفسه في هذه الأيام وإن قالوا بأن النذر سبب للوجوب

The author says:

"Or it is a *mi`yaar* for it, not a *sabab*, like the *qadhaa* of Ramadhaan."

This is coupled to the previous (statement), and this is the third type from the four types of *muwaqqat*, because the time of *qadhaa* is a *mi`yaar* (container for it) undoubtedly, and the *sabab* for its *wujoob* is the witnessing of the previous month (i.e. last year's Ramadhaan), not these days (i.e. this year's Ramadhaan). So, the *sabab* for *qadhaa* is the *sabab* for *adaa*, and the condition of its *shartiyyah* (being a stipulation) is not known, and what is apparent is its absence, because if no specific time is known, then any time will be its shart.

In some manuscripts it appears: "And the unrestricted vow (*nadhr*)." Because, its time is a *mi`yaar* (container) for it and is not a *sabab* for its *wujoob*, but rather, the *sabab* is the *nadhr* (vow). As for a specific vow (*an-nadhr al-mu`ayyan*), then it has been said: "It is a partner to the unrestricted vow (*an-nadhr al-mutlaq*) in this meaning (i.e. in the time being a *mi`yaar* for it) and it only opposes it in some of its rulings, and that is, the stipulation of the *niyyah* (intention) of *ta`yeen* (specifying) in (*an-nadhr*) *al-mutlaq* and that it (*an-nadhr al-mutlaq*) does not carry the possibility of being missed, and for this reason it has been restricted by it. What is apparent is that *an-nadhr al-mu`ayyan* (the specific vow) is similar to Ramadhaan in that the days act as a *mi`yaar* for it and a *sabab* for its *wujoob* after he has made obligatory upon himeslf in these days, even if they say that the *nadhr* (vow) is the *sabab* for the *wujoob*.

والحاصل أن النذر المعين شريك لرمضان في بعض الأحكام ولقضاء رمضان في بعض أخر, فألحق بأيهما شئت

وصاحب المنتخب الحسامي جعل النذر المعين من جنس صوم رمضان ولم يذكر قضاء رمضان والنذر المطلق من أقسام الأمر المقيد بل هو مطلق من قبيل الزكاة وصدقة الفطر, من أدخلهما في المقيد نظر إلى أنهما مقيدان بالأيام دون الليالي وهذا تمحل

(وتشترط فيه نية التعيين ولا يحتمل الفوات بخلاف الأولين)

أي يشترط في هذا التقسيم الثالث من الموقت نية التعيين بأن يقول نويت للقضاء والنذر ولا يتأدى بمطلق النية لوجود المزاحم في هذا اليوم لأن القضاء مطلق من الوقت, ولا بنية النفل أو واجب آخر

(كذا يشترط فيه التبييت)

أي النية من الليل لأن ما سوى رمضان كله محل للنفل فيقع جميع الإمساكات عن النفل ما لم يعين من الليل الصوم العارضي وهو القضاء والكفارة

The summary of this is that the specific vow (*an-nadhr al-mu`ayyan*) is similar to Ramadhaan in some of its rulings and similar to *qadhaa* of Ramadhaan in some other rulings, so link it to whichever of the two you want to.

The author of *al-Muntakhab al-Husaami* has put *an-nadhr al-mu`ayyan* (the specific vow) as being of the same *jins* (species) as the fast of Ramadhaan and he has not mentioned *qadhaa* of Ramadhaan, and *an-nadhr al-mutlaq* (the unrestricted vow) is from the categories of *al-Amr al-Muqayyad* (the restricted command); rather, it is *mutlaq* (unrestricted) like Zakaah and Sadaqat-ul-Fitr. The one who considers them to be *muqayyad* (restricted) does so because he looks at the fact that they are *muqayyad* (restricted) to the days and not the nights, but this is seeking (excuses, i.e. incorrect).

The author says:

"And stipulated in it is the *niyyah* of *ta`yeen* (specifying) and it does not carry the possibility of *fawaat* (being missed), contrary to the first two."

Meaning, stipulated in this third category of *muwaqqat* is the *niyyah* of *ta`yeen* (specifying), by the person saying, "I intend *qadhaa*." or: "I intend *nadhr* (a vow)." It is not discharged by simply making an (unspecified) intention, because there is crowding in these days because *qadhaa* is unrestricted from time, and nor (is it discharged) by the *niyyah* of *nafl* (voluntary) or a different *waajib*.

The author says:

"Similarly, stipulated in it is *tabyeet*."

(What the author means by *tabyeet* is) making the intention in the night, because what is besides Ramadhaan, all of it is the place (time) for *nafl* (optional fast), so all abstainings will fall as *nafl* if the person does not specify (in his intention) at night for a different (i.e. not *nafl*) fast, which is the *qadhaa* or the *kaffaarah*.

والنذر المطلق بخلاف النذر المعين فإنه يتأدى بمطلق النية, ونية النفل ولكن لا يتأدى بنية الواجب آخر ولا يشترط فيه التبييت لأنه معين في نفسه كرمضان لا يقع الإمساك المطلق إلا عليه ما لم يصرفه إلى واجب آخر. وأيضاً لا يحتمل هذا القسم الثالث الفوات بل كلما صام له يكون مؤدياً لأن كل العمر محل له عندنا

وعند الشافعي رحمه الله إن لم يقض رمضان حتى جاء رمضان آخر تجب عليه الفدية مع القضاء جبراً له على التكاسل والتهاون

(بخلاف)

القسمين

(الأولين)

وهما الصلاة والصوم فإنهما يحتملان الفوات إذا لم يؤدهما في الوقت المعهود فيكون قضاءاً

(أو يكون مشكلاً يشبه المعيار والظرف كالحج)

عطف على ما سبق وهو النوع الرابع من أنواع الوؤقت يعني أو يكون وقت المؤقت مشكلاً أي مشتبه الحال يشبه المعيار من وجه والظرف من وجه ونظيره وقت الحج, فإنه مشكل بهذا المعنى وذلك من وجهين

الأول إن وقت الحج شوال وذوالقعدة وعشرة ذي الحجة والحج لا يؤدى إلا في بعض عشرة ذي الحجة فيكون الوقت فاضلاً فمن هذا الوجه يكون ظرفاً

The unrestricted vow is different to the specific vow, because it is discharged with just the *niyyah* alone, and with the *niyyah* of *nafl*, but it is not discharged with the *niyyah* of a different *waajib* (i.e. like *qadhaa* or *kaffaarah*), and there is no stipulation in it of *tabyeet* (making the *niyyah* at night) because it is already *mu`ayyan* (specified) in itself, like (how in) Ramadhaan (any fast performed) unrestricted (from a specific *niyyah*) does not fall (i.e. count) except upon it (i.e. as a fast of Ramadhaan) so long as he (the person) does not divert it (the fast) to a different *waajib*. Also, this third category does not carry the possibility of *fawaat* (being missed); rather, whenever he fasts it, it will be counted as *adaa*, because his entire lifetime is the place (and time) for performing it, according to us (Ahnaaf).

According to Imaam ash-Shaafi`ee رحمة الله عليه, if he does not make *qadhaa* of Ramadhaan until the next Ramadhaan comes, then *fidyah* will become *waajib* upon him along with the qadhaa, as a punishment for his laziness and his treating (the *qadhaa*) lightly.

The author says:

"Contrary (to)."

The two types.

"The first (i.e. the first two categories)."
And those two (categories) are Salaah and fasting, because both of them carry the possibility of *fawaat* (being missed out) if the person does not discharge them in the appointed time, for then they will become *qadhaa*.

The author says:

"Or it becomes obscure, resembling *mi`yaar* and *zharf*, like Hajj."

This is coupled to what has preceded, and this is the fourth type from the four categories of *mu'aqqat* (restricted by time), i.e. or the time of the *mu'aqqat* becomes difficult (obscure), i.e. obscure in its condition, resembling a *mi`yaar* from one facet and a *zharf* from another facet, and it is like the time of Hajj, because it is similar to this meaning and that one from two facets.

The first is that, the type of Hajj is Shawwaal, Dhu-l Qa`dah and the first 10 days of Dhu-l Hijjah; however, Hajj is not discharged except in part of the 10 days of Dhu-l Hijjah, and so the rest of the time-zone is excess (extra), so from this angle it (the time-zone of Hajj) is a *zharf*.

ومن حيث أنه لا يؤدى في هذا الوقت إلا حج واحد يكون معياراً بخلاف الصلاة فإنه في وقت واحد يؤدى صلوات مختلفة

والثاني: أن الحج لا يفرض في العمر إلا مرة واحدة فإن أدرك العام الثاني والثالث يكون الوقت موسعاً يؤديه في أي وقت شاء وإن لم يدرك العام الثاني بأن مات يكون الوقت مضيقاً لابد له أن يؤدي في العام الأول, لكن أبا يوسف رحمه الله إعتبر جانب التضييق ومحمداً رحمه الله إعتبر جانب التوسع على ما قال المصنف رحمه الله:

(ويتعين أشهر الحج من العام الأول عند أبي يوسف رحمه الله خلافاً لمحمد رحمه الله)

أي لابد عند أبي يوسف رحمه الله أن يؤدي الحج في العام الأول إحتياطاً إحترازاً عن الفوات فإن الحياة إلى العام الثاني موهوم والوقت مديد

وعند محمد رحمه الله يترخص له أن يؤخر إلى العام الأخر بشرط أن لا يفوت منه

From the aspect that, it is not possible to perform during this time-frame except one Hajj, it is a *mi`yaar*, contrary to Salaah, because in one Salaah time it is possible to perform different Salaats.
The second thing is that Hajj becomes *fardh* only once ever in the lifetime of a person; so, if he catches the second year, and the third year, then the *waqt* (time) is spacious enough for him to discharge (the obligation of Hajj) in any time that he wishes. However, if he does not catch the second year, such as by dying (before then), then the time is constricted, and it is necessary for him to discharge it in the first year. However, Imaam Abu Yusuf **رحمة الله عليه** has taken into consideration the aspect of the constriction of time (i.e. he has looked at the fact that this person can die within the very first year that Hajj is *fardh* upon him, and has based his ruling on that), and Imaam Muhammad **رحمة الله عليه** has taken into consideration the aspect of spaciousness of time (i.e. he has looked at the fact that Hajj is only ever fardh once, and a person has his entire lifetime to perform it, and so he has based his ruling on that). This is derived from what the author **رحمة الله عليه** has said:

"From the first year, the months of Hajj are specific according to Abu Yusuf رحمة الله عليه (i.e. he must perform Hajj during the very first year that it is *fardh* upon him), contrary to Muhammad رحمة الله عليه."

What he means by this is that, according to Imaam Abu Yusuf رحمة الله عليه, it is necessary that the person discharges the obligation of Hajj in the very first year that it becomes *fardh* on him, and he bases this on *ihtiyaat* (caution), in order to avoid *fawaat* (missing out on discharging the obligation), because living long enough to reach the second year is something that is doubtful, and the time is long.

According to Imaam Muhammad رحمة الله عليه, the person has been granted concession to delay the discharging of the obligation of Hajj until the following year (or following years), on condition that he will not miss out on discharging it.

وثمرة الإختلاف لا تظهر إلا في الإثم فإذا لم يؤد في العام الأول يصير فاسقاً مردود الشهادة عند أبي يوسف رحمه الله ثم إذا أداه في العام الثاني يرتفع عنه الإثم وتقبل شهادته وهكذا في كل عام

وعند محمد رحمه الله لا يأثم إلا عند الموت أو ادراك علاماته ولا يكون مردود الشهادة ولكن كلما أدى يكون أداءاً عند الفريقين لا قضاءاً

(ويتأدى باطلاق النية لا بنية النفل)

هذا من حكم كونه مشكلاً أي إن أدى الحج بمطلق النية بأن يقول نويت الحج يقع عن الفرض بخلاف ما إذا قال نويت حج النفل فإنه يقع عن النفل

وقال الشافعي رحمه الله يقع هاهنا عن الفرض أيضاً لأنه سفيه يجب أن يحجر عليه ولا يقبل تصرفه

قلنا: هذا يبطل الإختيار الذي هو شرط في العبادات والحج

والحاصل أن الحج لما كان يشبه المعيار والظرف أخذ شبهاً من كل منهما فمن حيث كونه معياراً أخذ شبهاً من الصوم فيتأدى بمطلق النية كالصوم ومن كونه ظرفاً أخذ شبهاً من الصلاة فلا يتأدى بنية النفل كالصلاة وهكذا ينبغي أن يفهم

ثم لما فرغ المصنف عن مباحث المطلق والموقت شرع في بيان كون الكفار مأمورين بالأمر أو لا فقال:

The fruit of the disagreement (between them) becomes apparent when it comes to the issue of sin, because, if this person does not discharge the obligation of Hajj within the first year that it became *fardh* upon him, then according to Imaam Abu Yusuf رحمة الله عليه, he becomes a *faasiq* and his testimony is rejected (he becomes *mardood-ush-shahaadah*). Thereafter, if he discharges the obligation within the second year, the sin is lifted from him and his testimony is once again accepted, and this is the case regardless of which year he discharges it in.

According to Imaam Muhammad رحمة الله عليه, he is not sinful except at the time of death (if he had not discharged it), or when the signs of death appear, but he does not become *mardood-ush-shahaadah*. However, according to both of them, no matter which year he discharges it, it is regarded as *adaa* and not as *qadhaa*.

The author says:

"And it (Hajj) is discharged simply by an unrestricted intention, not by the intention of *nafl*."
This is on account of its being obscure, i.e. if the Hajj is discharged by an unrestricted intention, such as by the person saying, "I intend Hajj." it will be regarded as referring to the *fardh* Hajj, contrary to if he were to say, "I intend to perform a *nafl* Hajj." for in that case, it would be regarded as *nafl*, not as *fardh*.

However, Imaam ash-Shaafi`ee رحمة الله عليه says that even if he makes the intention for *nafl*, it will still be counted as *fardh*, because he is a *safeeh* (foolish person, incapable of logical thought, hence he would make such a foolish decision) and therefore he is restricted (*yuhjar `alayhi*, i.e. he is like the *safeeh* who is restricted from using wealth as he wishes, but rather, a *wali* will deal with the transactions on his behalf, taking care of him) and his choosing (it to be nafl) will not be accepted.

We (the Ahnaaf) say: "This would nullify the choice (every person has) which is a *shart* (condition) in all `Ibaadaat as well as Hajj."

The summary of all this is that, because Hajj resembles a *mi`yaar* as well as a *ẓharf*, it takes a resemblance from each of the two, and therefore, from the aspect of it being a *mi`yaar*, it will take a resemblance from fasting and thus it will be discharged by an unrestricted *niyyah* (intention), just as fasting (in Ramadhaan) is, and from the aspect of it being a *ẓharf*, it will take a resemblance with Salaah, and thus it will not be discharged if the *niyyah* made was that of *nafl* (optional), and it is necessary to be understood in this manner.

Thereafter, once the author completed his discussion on *mutlaq* and *muwaqqat*, he now commences his explanation on whether or not the Commands (of the Sharee`ah) are directed at the Kuffaar or not, so he says:

(والكفار مخاطبون بالأمر بالإيمان وبالمشروع من العقوبات والمعاملات)

لأن الأمر بالإيمان في الواقع لا يكون إلا للكفار, وأما للمؤمنين كما في قوله تعالى:

يَا أَيُّهَا الَّذِيْنَ آمَنُوْا آمِنُوْا

فإنما يراد به الثبات على الإيمان والإستقامة عليه أو مواطأة القلب للسان, أو نحو ذلك وكذاهم أليق بالعقوبات لأن العقوبات وهي الحدود والقصاص إذا كانت تجري على المسلمين لأجل انتظام العالم ومصلحة البقاء والزجر عن المعاصي فالكفار أولى بهما سيما عند أبي حنيفة رحمه الله, لأن الحدود والكفارات عنده زاجرة للناس عن الإرتكاب لا ساترة ومزيلة للمعصية, وأما المعاملات فهي دائرة بيننا وبينهم فينبغي أن نتعامل معهم حسب ما تعاملنا بيننا في البيع والشراء والإجارة وغيرها سوى الخمر والخنزير فإنهما مباحان لهم لا لنا وإليه أشا عليه الصلاة والسلام بقوله:

الْخَمْرُ لَهُمْ كَالْخَلِّ لَنَا وَالْخِنْزِيْرُ لَهُمْ كَالشَّاةِ لَنَا

وإنما بذلوا الجزية ليكون دماؤهم كدمائنا وأموالهم كأموالنا

The author says:

"The Kuffaar are addressed with the command to have Imaan, and they are (also bound) by the legislated matters (in the Sharee`ah), like the prescribed punishments, and the transactions."

This is because the command to have Imaan, in reality, is not addressed except at the Kuffaar. As for the Mu'mineen, like in the Aayah:

{"*O you who have Imaan, bring Imaan...*"}

Then, the intended meaning of this is to have firmness upon Imaan, and *istiqaamah* upon it, or, the intended meaning is that the heart should correspond to the tongue, or similar to that. Similarly, they are more deserving of the prescribed punishments because the prescribed punishments, which are the *hudood* (literally "limits") and *qisaas* (retribution), if they are imposed upon the Muslims for the sake of the world running in an organised manner, and for the benefit of remaining, and to deter people from sin, then the Kuffaar are more deserving of this, especially according to Imaam Abu Haneefah **رحمة الله عليه**, because accoding to him, the purpose of the *kaffaaraat* and the *hudood* is to deter people from perpetrating sins, (and they are not for the purpose of) concealing or removing sins. As for *mu`aamalaat* (transactions), then this applies between us and them, so it is necessary that we deal with them (in business dealings) as we deal with one another, with regards to buying, selling, leasing, etc., except for alcohol and swine, because that is *mubaah* (permissible) for them but not for us, and this has been pointed out to by Rasoolullaah **صلى الله عليه وسلم** when he said:

"*Khamr* (alcohol) for them is like vinegar for us, and *khinzeer* (swine) for them is a like sheep for us."
They are commanded to pay the *jizyah* so that their blood becomes like our blood (i.e. it becomes *haraam*) and their wealth like our wealth.

(وبالشرائع في حكم المؤاخذة في الآخرة بلا خلاف)

يعني أن الكفار مخاطبون بالشرائع وهو الصيام والصلاة والزكوة والحج في حق المؤاخذة في الآخرة باتفاق بيننا وبين الشافعي رحمه الله فيهم يعذبون بترك اعتقاد الفرائض والواجبات كما يعذبون بترك اعتقاد أصل الإيمان لقوله تعالى:

مَا سَلَكَكُمْ فِيْ سَقَرٍ قَالُوْا لَمْ نَكُ مِنَ الْمُصَلِّيْنَ وَلَمْ نَكُ نُطْعِمُ الْمِسْكِيْنَ

أي لم نك من المعتقدين للصلاة المفروضة والزكوة المفروضة. هكذا قالوا, وقد فسرته في التفسير الأحمدي بأطنب وجه وأشمله

(وأما في وجوب الأداء في أحكام الدنيا فكذلك عند البعض)

يعني أنهم مخاطبون بأداء العبادات في الدنيا أيضاً عند البعض من مشايخ العراق وأكثر أصحاب الشافعي رحمه الله

وهذه مغلطة عظيمة للقوم لأن الشافعي رحمه الله لما لم يقل بصحة أدائها منهم حالة الكفر ولا بوجوب قضائها بعد الإسلام فما معنى وجوب الأداء في الدنيا, فلذا أولوا كلامه بأن معنى الخطاب في حقهم: آمنوا ثم صلوا. فيقدر الإيمان مقتضى تبعاً للعبادات

The author says:

"And with the Sharee`ah, in that they will be taken to task in the Aakhirah, and there is no disagreement upon this."

What he means is that the Kuffaar are addressed by the commands of the Sharee`ah as well, which is fasting, Salaah, Zakaah, Hajj, in the meaning that, they will be taken to task (for not discharging these duties) in the Aakhirah, and there is unanimous agreement regarding this between us and Imaam ash-Shaafi`ee **رحمة الله عليه**, because they (the Kuffaar) are punished for not believing in these *faraa'idh* and *waajibaat* just as they will be punished for having not believed in the actual Imaan itself, like Allaah Ta`aalaa says:

{"*What has caused you to enter Saqar (Jahannam)? They will say: "We were not from those who performed Salaah, nor did we feed the poor.*"}

Meaning, we were not from those who believed in the obligatoriness of Salaah and Zakaah. This is as they (the `Ulamaa) have said, and I have explained this issue in further detail in *at-Tafseer al-Ahmadi*.

The author says:

"As for the obligation of discharging (these duties) in the Dunyaa, then this is the opinion of some (`Ulamaa)."

Meaning, they are addressed with the command to discharge the `Ibaadaat in the Dunyaa also, according to some of the Mashaayikh of Iraq and most of the companions of Imaam ash-Shaafi`ee رحمة الله عليه.

But, this is an enormous mistake of the people, because Imaam ash-Shaafi`ee رحمة الله عليه did not say that if they discharge (these duties) it is valid whilst they are in the state of Kufr, and nor did he say it is *waajib* upon them to make *qadhaa* of it after accepting Islaam, so what then is the meaning of "the obligation of discharging (these duties) in the Dunyaa"? For this reason, they have interpreted his speech to mean that the meaning of the (commands) being addressed at them is that it means, "Bring Imaan, and thereafter perform Salaah." So, Imaan has been hidden (in the sentence) as a necessity, followed up by `Ibaadaat.

وثمرته أنهم يؤاخذون عنده في الآخرة بترك فعل الصلاة كما يعذبون بترك إعتقادها إتفاقاً فلو لم يكونوا مخاطبين بأداء العبادات في الدنيا لما عذّبوا في الآخرة بتركها

هذا غاية ما قيل في التلويح في تحقيق هذا المقام

(والصحيح أنهم لا يخاطبون بأداء ما يحتمل السقوط من العبادات)

أي المذهب الصحيح لنا أن الكفار لا يخاطبون بأداء العبادات التي تحتمل السقوط مثل الصلاة والصوم, فإنهما يسقطان عن أهل الإسلام بالحيض والنفاس ونحوهما لقوله عليه الصلاة والسلام لمعاذ حين بعثه إلى اليمن:

لَتَأْتِيْ قَوْماً مِّنْ أَهْلِ الكِتَابِ فَادْعُهُمْ إِلَى شَهَادَةِ أَن لَّا إِلَهَ إِلَّا اللهُ وَأَنِّيْ رَسُوْلُ اللهِ, فَإِنْ هُمْ أَطَاعُوْكَ فَأَعْلِمْهُمْ أَنَّ اللهَ فَرَضَ عَلَيْهِمْ خَمْسَ صَلَوَاتٍ فِيْ كُلِّ يَوْمٍ وَّلَيْلَةٍ

الحديث

فإنه تصريح بأنهم لا يكلفون بالعبادات إلا بعد الإيمان

وأما الإيمان فلما لم يحتمل السقوط من أحد لاجرم كانوا مخاطبين به

ولما فرغ المصنف رحمه الله عن مباحث الأمر شرع في مباحث النهي فقال:

The fruit (of this disagreement) is that, according to him, they will be taken to task in the Aakhirah for having not performed Salaah just as they will be punished for not believing in it, and this is something on which there is unanimity. So, if they were not addressed by the command to discharge these `Ibaadaat in the Dunyaa, then why would they be punished in the Aakhirah for not having done it?

This is the most of what has been mentioned in *at-Talweeh* (the *sharh* of *at-Tawdheeh*) regarding this issue.

The author says:

"The correct view is that they are not addressed by the command to discharge those `Ibaadaat which have the possibility of dropping off."

What he means is that, the correct Madh-hab according to us is that the Kuffaar are not addressed by the command to discharge the `Ibaadaat which have the possibility of dropping off, like Salaah and fasting, because they drop away even from the Muslims in the cases of *haidh* and *nifaas*, etc., because Rasoolullaah **صلى الله عليه وسلم** said to Hadhrat Mu`aadh **رضي الله عنه** when he sent him to Yemen:

"You will come to a people from the Ahl-e-Kitaab, so call them to the *Shahaadah* (testification) that there is no Ilaah but Allaah and that I am the Rasool of Allaah. If they obey you (in that), then inform them that Allaah has made obligatory upon them five Salaats in every day and night..." [*Al-Hadeeth.*]

This is a clear statement showing that they have not been made *mukallaf* to discharge those `Ibaadaat except after bringing Imaan.

As for Imaan, then, because is does not have the possibility of falling away from anyone, there is no doubt that they have been addressed by the command to bring Imaan.

After the author **رحمة الله عليه** completed his discussion on the types of *amr*, he now begins (a new discussion) on the types of *nahi* (prohibition), so he says:

النهي

(ومنه النهي وهو قوله)

أي القائل

(لغيره على سبيل الإستعلاء لا تفعل)

يعني أن النهي كالأمر في كونه من الخاص لأنه لفظ وضع لمعنى معلوم وهو التحريم وباقي القيودات كما مضى في الأمر غير أنه وضع قوله: لا تفعل, مكان قوله: إفعل, وهو يشمل المخاطب والغائب والمتكلم والمعروف والمجهول

(وإنه يقتضي صفة القبح للمنهي عنه ضرورة حكمة الناهي)

والحكيم إنما ينهى عن الفحشاء والمنكر, كما أن الحسن في جانب الأمر كذلك

ثم إعلم أن في النهي تقسيمات بحسب أقسام القبح وهو أنه إما قبيح لعينه أو لغيره وكل منهما نوعان فصار المجموع أربعة على ما بينه المصنف بقوله:

An-Nahi (Prohibition)

The author says:

"And from it (i.e. *khaas*) is *an-Nahi* (prohibition), and that is saying," i.e., a person saying, "to another, regarding himself as being higher (i.e. higher in authority, etc.), 'Do not do (this)."
What he means is that *nahi* is like *amr* in that it is part of *khaas*, because it is a term used for a specific, known meaning, and that is (in the case of *nahi*): *at-Tahreem* (to prohibit or make something *haraam*), and the rest of the restrictions are like what has passed when it came to amr, except that he has used the words "Do not do" in place of the word: "Do." And this *nahi* encompasses the second-person, the third-person and the speaker, and it encompasses *ma`roof* and *majhool*.

The author says:

"It necessitates that the quality of ugliness or badness exists within the thing being prohibited, as this is necessitated by the wisdom of the prohibiter."

What he means is that a wise man (*hakeem*) will not prohibit something unless it is from that which is shameless and evil, just as when it comes to *amr*, the wise man will not order except that which is good.

Thereafter, know that *nahi* has different categories or types which are proportionate to the level of the badnesss (or ugliness), and that is, either a thing is *qabeeh li-`aynihi* (bad in and of itself) or *qabeeh li-ghayrihi* (bad because of something else), and each of these are of two types, so they are four types altogether, as the author explained with his statement:

(وهو)

أي المنهي عنه المفهوم من النهي

(إما أن يكون قبيحاً لعينه)

أي تكون ذاته قبيحة بقطع النظر عن الأوصاف اللازمة والعوارض المجاورة

(وذلك نوعان: وضعاً وشرعاً)

أي الأول من حيث أنه وضع للقبيح العقلي بقطع النظر عن ورود الشرع, والثاني من حيث أن الشرع ورد وإلا فالعقل يجوزه

(أو لغيره)

عطف على قوله: لعينه

(وذلك نوعان: وصفاً, ومجاوراً)

يعني أن النوع الأول ما يكون القبيح وصفاً للمنهي عنه أي لازماً غير منفك عنه كالوصف, والنوع الثاني ما يكون القبيح فيه مجاوراً للمنهي عنه في بعض الأحيان ومنفكاً عنه في بعض آخر

(كالكفر وبيع الحر وصوم يوم النحر والبيع وقت النداء)

أمثلة للأنواع الأربعة على ترتيب اللف والنشر, فالكفر مثال ما قبح لعينه وضعاً لأنه وضع لمعنى هو قبيح في أصل وضعه والعقل مما يحرمه لو لم يرد عليه الشرع لأن قبح كفران المنعم مركوز في العقول السليمة

وبيع الحر مثال لما قبح لعينه شرعاً لأن البيع لم يوضع في اللغة لمعنى هو قبيح عقلاً وإنما القبح فيه لأجل أن الشرع فسر البيع بمبادلة مال بمال والحر ليس بمال عنده

The author says:

"And it..." i.e. the thing which is prohibited (*al-manhi `anhu*), the thing which is understood from the prohibition, "is either *qabeeh li-`aynihi* (ugly and bad in and of itself)", i.e. its very being is ugly and evil, without even looking at its qualities and accompanying factors. "And that is of two types: (according to) meaning and (according to) the Sharee`ah." i.e. the first type is *qabeeh li-`aynihi* from the facet that, it was placed for something that is evil logically, i.e. its evil can be understood by logic without looking at what the Sharee`ah has said about it. The second type is such a thing that its evilness is understood because the Sharee`ah has said so, and if it hadn't, logic would have deemed it to be permissible.

The author says:

"Or (*qabeeh*) *li-ghayrihi* (such a thing which is evil because of something else)."

This is coupled to his statement: "*li-`aynihi*."

The author says:
"And that is of two types: descriptive, and concomitant."

What he means is that, the first type of that which is *qabeeh li-ghayrihi* is that in which the badness is a description of the prohibited thing, meaning, it is bound to it and does not depart from it, like a description. The second type is that in which the evil accompanies the prohibited thing sometimes and is not present with it at other times.

The author says:

"Like Kufr, and selling silk, and fasting on the Day of *an-Nahr*, and selling at the time of the call (i.e. Adhaan)."

These are examples of the four types, using the order of *laff* and *nashr* (explained earlier on in this book).

Kufr is an example of something which is *qabeeh li-`aynihi* (evil in and of itself), in placement, because it was placed for a meaning which is evil in the very root of its placement, and logic deems it to be haraam even if the Sharee`ah had not mentioned anything about it, because the ugliness and evilness of bein ungrateful to the one who bestows favours upon you is something that is understood by the intellects that are sound.

The selling of silk is an example of something that is *qabeeh li-`aynihi*, according to the Sharee`ah, and that is because *bay`* (selling) was not placed in language for a meaning that is evil, which the intellect deems to be evil, but rather, the evilness in it is because the Sharee`ah has defined *bay`* (transaction) as the exchange of wealth for wealth, and silk is not wealth according to him.

وكذا صلاة المحدث قبيحة لأن الشارع أخرج المحدث من أن يكون أهلاً لأدائها

وصوم يوم النحر مثال لما قبح لغيره وصفاً فإن الصوم في نفسه عبادة وإمساك لله تعالى وإنما يحرم لأجل أن يوم النحر يوم ضيافة الله تعالى وفي الصوم إعراض عنها وهذا المعنى لازم بمنزلة الوصف لهذا الصوم, لأن الوقت داخل في تعريف الصوم ووصف الجزء وصف للكل فصار فاسداً ولم يلزم بالشروع, بخلاف النذر فإنه في نفسه طاعة ولا فساد في التسمية وإنما الفساد في الفعل فيجب قضاؤه, وبخلاف الصلاة في الأوقات المكروهة فإنها وإن كانت من هذا القسم أيضاً لكن الوقت ليس داخلاً في تعريفها ولا معياراً لها فلم تكن فاسدة بل مكروهة تلزم بالشروع ويجب القضاء بالإفساد

Similarly, the Salaah of a person who is impure (*muhdith*) is evil because the Lawgiver has excluded the *muhdith* from being fit for discharging it.

Fasting on the Day of *Nahr* is an example of that which is *qabeeh li-ghayrihi*, in a descriptive sense, because fasting in and of itself is an `Ibaadah and holding back (from food, drinks, marital relations) for the sake of Allaah Ta`aalaa, but it is *haraam* because of the fact that the Day of *Nahr* is a day in which people are the guests of Allaah Ta`aalaa, and to fast is to turn away from that, and this meaning is bound (to it) on the level of a description for this fast, because time enters into the definition of fasting and the description of a part is the description for the entire thing, so it is spoiled and he is not bound to commence (it), contrary to a vow (*nadhr*), because it

(the vow) in itself is obedience, and there is no corruption in naming (i.e. there is no corruption in a person simply naming a certain day to fast, as a vow), but rather, the *fasaad* (corruption) lies in the action (of fasting on the Day of *Nahr*), so it is necessary to make *qadhaa* of it (this fast that was vowed to be performed on the Day of *Nahr*, it must be made *qadhaa* of on some other day). It is also different from Salaah performed in the *makrooh* times, because even though it is from this type as well, but, the *waqt* (time-zone) does not enter into its definition nor does it act as a *mi`yaar* (container) for it, and thus Salaah performed at those times will not be invalid, but will be *makrooh* which becomes binding to perform once it has been commenced and *waajib* to make *qadhaa* of if that commenced Salaah is then spoiled (i.e. the person's wudhoo breaks, or he breaks the Salaah, he has to make *qadhaa* of it).

والبيع وقت النداء مثال لما قبح لغيره مجاوراً فإن البيع في ذاته أمر مشروع مفيد للملك وإنما يحرم وقت النداء لأن فيه ترك السعي إلى الجمعة الواجب بقوله تعالى:

فَاسْعَوْا إِلَى ذِكْرِ اللهِ وَذَرُوْا الْبَيْعَ

وهذا المعنى مما يجاور البيع في بعض الأحيان فيما إذا باع وترك السعي وينفك عنه في بعض الأحيان فيما إذا سعى إلى الجمعة وباع في الطريق بأن يكون البائع والمشتري راكبين في سفينة تذهب إلى الجامع

وفيما إذا لم يبع ولم يسع إلى الجمعة بل اشتغل بلهو آخر

فهذا البيع كبيع الغاصب يفيد الملك بعد القبض
ومثله وطئ الحائض مشروع من حيث أنها منكوحة وإنما يحرم لأجل الأذى, وهو مما يمكن أن ينفك عن الوطىء بأن يوجد الوطىء بدون الأذى, والأذى بدون الوطىء

وكذا الصلاة في الأرض المغصوبة مشروعة في ذاتها وإنما تحرم لأجل شغل ملك الغير وهو مما ينفك عن الصلاة بأن توجد الصلاة بدون شغل ملك الغير بل في ملك نفسه ويوجد الشغل بدون الصلاة بأن يسكن فيه ولا يصلي

Bay` (transactions) at the time of the call (i.e. Adhaan) is an example of something that is *qabeeh li-ghayrihi*, in terms of an accompanying factor,

because *bay`* in and of itself is a matter that has been legislated (permitted) and which results in possession (of the item). It is haraam at the time of (Adhaan) because to engage in *bay`* at the time of Adhaan is to leave off the obligatory rushing to the Jumu`ah, as mentioned in the Aayah:

{"*So hasten to the Dhikr of Allaah and leave off bay`...*"}

This meaning is from that which accompanies *bay`* sometimes, in the case of a person selling and leaving off rushing (to the Jumu`ah), and it is separate from it at other times, such as if he rushes to Jumu`ah and engages in *bay`* along the road, such as by both the seller and the buyer both riding on a ship that is heading to the (Masjid). And also, in the case of a person not engaging in *bay`* but also not rushing to Jumu`ah, but rather, engaging in some futile activity.

This type of *bay`* is like the *bay`* done forcefully: it results in possession (of the item) after taking it. Similar to it is having relations with a woman who is in *haidh*. It is legislated (permitted to have relations with her) because she is married (to him), but it is *haraam* because of the harm (caused to both him and her), and that is something that is possible to be separate from the intercourse, such as there being intercourse without harm and also harm without there being any intercourse.

Similarly, Salaah performed in a land that was forcefully seized is legislated in itself but is *haraam* because of the fact that it is making use of the possession of someone else, and that is something that is separate from Salaah such as by there being Salaah without using the property of someone else, rather, without using the possession altogether, and there can also be using (the land) without Salaah, such as by him living in it and not performing Salaah.

ولما فرغ عن تقسيم النهي أراد أن يبين أن أيّ نهي يقع على القسم الأول وأيّ نهي يقع على القسم الآخر فقال:

(والنهي عن الأفعال الحسية يقع على القسم الأول)

والمراد بالأفعال الحسية ما يكون معانيها المعلومة القديمة قبل الشرع باقية على حالها لا تتغير بالشرع كالقتل والزنا وشرب الخمر بقيت معانيها وماهياتها بعد نزول التحريم على حالها, ولا يراد أن حرمتها حسية معلومة بالحس لا يتوقف على الشرع, فالنهي عن هذه الأفعال عند الإطلاق

وعدم الموانع يقع على القبح لعينه إلا إذا قام الدليل على خلافه كالوطىء حالة الحيض حرام لغيره مع أنه فعل حسي لقيام الدليل

(وعن الأمور الشرعية يقع على الذي اتصل به وصفاً)

After the author completed his division of *nahi*, he now intends to make clear what *nahi* falls into the first type and what *nahi* falls into the other type, so he says:

"*Nahi* (prohibition) from *al-Af`aal al-Hissiyyah* (physical actions) falls into the first type."

The meaning of *al-Af`aal al-Hissiyyah* are those things which, their meanings were known from old, before the Sharee`ah mentioned anything about it, and they remained upon their states, unchanging through the Sharee`ah, like killing, and *zinaa*, and drinking *khamr* (alcohol). These things remained upon their meanings and their forms after the revelation of the prohibition (of them). They remained upon their (old) condition. The intended meaning (of *al-Af`aal al-Hissiyyah*) is not that their prohibition is physical, known through the touch or feeling and not dependant on the Sharee`ah, for the prohibition from these types of actions - when used unrestrictedly and when there are no preventative factors - falls into what is *qabeeh li-`aynihi*, unless there is some evidence to the contrary, like intercourse during *haidh* is *haraam li-ghayrihi* (because of something else) despite the fact that it is a physical, sensory action, and this is so because of the evidence.

The author says:

"And the matters of the Sharee`ah fall into that which is connected to it as a description."

عطف على قوله عن الأفعال الحسية أي والنهي عن الأمور الشرعية يقع على القسم الذي اتصل به القبح وصفاً يعني يحمل على أنه قبيح لغيره وصفاً والمراد بالأمور الشرعية ما تغيرت معانيها الأصلية بعد ورود الشرع بها كالصوم والصلاة والبيع والإجارة, فإن الصوم هو الإمساك في الأصل وزيدت عليه في الشرع أشياء, والصلاة هو الدعاء وزيدت عليه أشياء, والبيع مبادلة المال بالمال فقط زيدت عليها أهلية العاقدين ومحلية المعقود عليه وغير ذلك, والإجارة مبادلة المال بالمنافع زيدت عليه معلومية المستأجر والأجرة والمدة وغير ذلك

فالنهي عن هذه الأفعال عند الإطلاق يحمل على القبح الوصفي إلا إذا دل الدليل على كونه قبيحاً لعينه كالنهي عن بيع المضامين والملاقيح وصلاة المحدث, لأن القبح يثبت إقتضاءاً

(فلا يتحقق على وجه يبطل به المقتضي وهو النهي)

دليل على الدعوى الأخيرة وبيانه يقتضي بسطاً وهو أن في النهي عن الأفعال الشرعية إختلافاً

This is coupled to his statement regarding *al-Af`aal al-Hissiyyah* (physical actions, or sensory actions), and what he means is that, the *nahi* (prohibition) against *al-Umoor ash-Shar`iyyah* (those matters the meanings of which changed after the Sharee`ah) fall into the category which has evil attached to it as a *wasf* (description), i.e. it is carried upon (the meaning that) it is *qabeeh li-ghayrihi* (evil because of something else) as a description.

The meaning of *al-Umoor ash-Shar`iyyah* are those things which, their meanings changed after the coming of the Sharee`ah, such as fasting, and Salaah, and *bay`* (business), and *ijaarah* (leasing). Because, the original meaning of sawm (fasting) is *imsaak* (to hold back). The Sharee`ah added extra meanings to it. The original meaning of Salaah is Du`aa. The Sharee`ah added things to it (i.e. such as *qiyaam*, *qiraa'ah*, *rukoo`*, *sujood*, etc.) *Bay`* originally is just an exchange of wealth for wealth. The Sharee`ah added to it things such as both the buyer and seller being fit (to do *bay`*), and that the item being purchased be present (not absent), etc. *Ijaarah* (leasing) is the exchange of wealth for benefits. The Sharee`ah added to it that the thing being leased must be known, and the fee being paid must be known, and the time it will be leased for must be known, etc.

The *nahi* (prohibition) for these actions, when it is unrestricted (i.e. when there are no corrobarating evidences or preventative factors), are carried upon the meaning of descriptive evilness, unless there is evidence which points out to it being *qabeeh li-`aynihi* (evil in and of itself), like the *nahi* (prohibition) against the *bay`* of *madhaameen* (i.e. the foetus inside the pregnant animal) and *malaaqeeh* (that which is still in the loins of the animal), and also the (prohibition against) the Salaah of a *muhdith* (one who is not in a state of *wudhoo*), because the evilness in it is established necessarily.

The author says:

"So it is not realised in a way that nullifies the necessitated thing, which is the *nahi* (prohibition)."

This is a proof (the author is giving) for a different claim, and its explanation requires further detail, and that is, there is *ikhtilaaf* (differences of opinion) with regards to the *nahi* (prohibition) against *al-Af`aal ash-Shar`iyyah* (those things which, their prohibition is known from the Sharee`ah).

فقال الشافعي رحمه الله: إنه يقتضي القبح لعينه وهو الكامل قياساً على الأول على ما سيأتي, ونحن نقول: إن النهي يراد به عدم الفعل مضافاً إلى اختيار العباد فإن كف عن المنهي عنه باختياره يثاب عليه وإلا يعاقب عليه وإن لم يكن ثمة إختيار سمي ذلك النف نفياً ونسخاً لا نهياً كما إذا لم يكن في الكوز ماء ويقال له: لا تشرب, فهذا نفي

وإن قيل له ذلك بوجود الماء سمي نهياً فالأصل في النهي عدم الفعل بالإختيار والقبح إنما يثبت في النهي إقتضاءاً ضرورة حكمة الناهي فينبغي أن لا يتحقق هذا القبح على وجه يبطل به المقتضي أعني النهي لأنه إذا أخذ القبح قبحاً لعينه صار النهي نفياً ويبطل الإختيار إذ إختيار كل شيء ما يناسبه

فاختيار الأفعال الحسية هو القدرة حساً أي يقدر الفاعل أن يفعل الزنا باختياره ثم يكف عنه نظراً إلى نهي الله تعالى فيكون القبح ثمة لعينه, واختيار الأفعال الشرعية أن يكون إختيار الفعل فيه من جانب الشارع ومع ذلك ينهاه عنه فيكون مأذوناً فيه وممنوعاً عنه جميعاً, وهما لا يجتمعان قط إلا أن يكون ذلك الفعل مشروعاً باعتبار أصله وذاته وقبيحاً باعتبار وصفه ولا يكفي في هذه الأفعال الشرعية الإختيار الحسي كما كان في القسم الأول

والشافعي رحمه الله إذا قال بكمال القبح أعني بعينه ذهب الإختيار الشرعي وبقي الإختيار الحسي وهو لا ينفعنا فصار النهي نفياً ونسخاً وبطل المقتضى لرعاية المقتضى وهو قبيح جداً. هذا هو غاية التحقيق في هذا المقام

Imaam ash-Shaafi`ee **رحمة الله عليه** said: "It necessitates that it is *qabeeh li-`aynihi*, and that is the complete." This was said as analogy on the first (type), as will be mentioned later on.

We (the Ahnaaf) say: "The intended meaning of *nahi* (prohibition) is the absence of (doing) that action, attached to the choice of the bondsmen.

So if the person abstains from the prohibited thing by his own *ikhtiyaar* (his own choice and his own volition), he will be rewarded, and if he does not

(abstain from the prohibited thing), he will be punished. If there was no *ikhtiyaar* (choice) in the matter, then that kind of staying away (from doing it) will be termed as *nafi* (negation) and abrogation, not *nahi* (prohibition).

An example of this is: there is no water in a tankard, and it is said to the person, "Do not drink." This is *nafi* (negation). On the other hand, if it is said to him in the presence of water, then it will be *nahi* (prohibition). Thus, what *nahi* actually is, is the willful absence of doing the action (i.e. despite having the ability do carry out that action, you choose not to do it).

Evilness is necessarily affirmed in *nahi* (prohibition) because of the *Hikmah* (Wisdom) of the Prohibiter (i.e. because it is obvious that One Who is All-Wise, if He prohibits something, it's because that thing is evil). So, it is necessary for this evilness to be realised in a manner that does not nullify the necessitated thing, which is the *nahi*, because when something is *qabeeh li-`aynihi* then the *nahi* changes to *nafi* (negation, i.e. because something that is *qabeeh li-`aynihi* is *baatil*, and impossible in the sense that it cannot exist according to the Sharee`ah) and the *ikhtiyaar* (choice) becomes nullified, because the choice (in this context meaning ability) of every thing is that which suits it.

So, the *ikhtiyaar* (choice or ability) of the sensory or physical actions is the physical ability, i.e. the person is capable of committing *zinaa* by his *ikhtiyaar* (choice and ability), but he abstains from it, looking at the *nahi* (prohibition) of Allaah Ta`aalaa. The evilness then is *li-`aynihi*. The *ikhtiyaar*, when it comes to *al-Af`aal ash-Shar`iyyah*, is that the *ikhtiyaar* of the action therein must be from the side of the Lawgiver, and with that, He has prohibited from it, so it is permitted and prohibited at the same time, but something cannot be prohibited and permitted at the same time except if that action has been legislated in terms of its origin or basis, and in terms of its being, but evil in terms of its description (i.e. associative factors). When it comes to these *al-Af`aal ash-Shar`iyyah*, then simply the physical or tangible *ikhtiyaar* is not sufficient, unlike how it is in the first category (i.e. *al-Af`aal al-Hissiyyah*).

Imaam ash-Shaafi`ee رحمة الله عليه, when he speaks about the "completion of evilness", i.e. *qabeeh li-`aynihi*, then the *Shar`i ikhtiyaar* leaves and only the tangible or physical *ikhtiyaar* remains, but that does not benefit us (when it comes to *al-Af`aal ash-Shar`iyyah*, because physical or tangible *ikhtiyaar* is not compatible with *al-Af`aal ash-Shar`iyyah*, because each of two has its own *ikhtiyaar* that suits it), so then the *nahi* becomes *nafi* (negation) and *naskh* (abrogation), and the necessitator is nullified due to taking into consideration the necessitated, and that is very bad (i.e. nullifying the necessitator because of the necessitated is evil, because then it contradicts its

purpose, because when the necessitated is nullified then so is the necessitator despite it having been established).

ثم فرغ على الأصل الذي مهده فقال: ولهذا كان الربوا وسائر البيوع الفاسدة وصوم يوم النحر مشروعاً بأصله غير مشروع بوصفه لتعلق النهي بالوصف لا بالأصل. أي لأجل أن النهي عن الأفعال الشرعية يقتضي القبح لغيره وصفاً كان هذه الأمور المذكورة مشروعة باعتبار الأصل دون الوصف

فإن الربوا هو معاوضة مال بمال فيه فضل يستحق بعقد المعاوضة لأحد الجانبين وهذا مشروع باعتبار ذاته الذي هو العوضان وإنما الفساد فيه لأجل الفضل المشروط

Thereafter, he completed his discussion on the rule which he laid down (i.e. that the *nahi* or prohibition against *al-Af`aal ash-Shar`iyyah* is carried upon the meaning of being *qabeeh li-ghayrihi* in terms of description), so he said:

"For this reason, *ribaa* (interest) and all other *faasid* (corrupt) transactions, and fasting on the Day of Nahr, are *mashroo`* (legislated) in terms of their origin but not legislated in terms of their description (i.e. accompanying factors), because the *nahi* is connected to the *wasf* (description, or accompanying factor) and not the *asl* (the root, or origin). What this means is that, because the *nahi* against *al-Af`aal ash-Shar`iyyah* necessitate that they be *qabeeh li-ghayrihi wasfan* (evil because of something else, a *wasf* (description) which is evil and which is inherent in it), then, these mentioned things are legislated in terms of the *asl* (root) but not the *wasf* (description), because *ribaa* (interest) is the exchange of wealth for wealth but with an increase which is binding because of the contract, on one of two parties. This is legislated in terms of its being, which is that of the exchange of something for something else, but the *fasaad* (corruption) in it is because of the *wasf* (description), which is the stipulated increase (in *ribaa*).

وهكذا حال سائر البيوع الفاسدة كالبيع بشرط لا يقتضيه العقد وفيه نفع لأحد المتعاقدين أو للمعقود عليه الذي هو أهل الإستحقاق والبيع بالخمر ونحوه

كل ذلك مشروع باعتبار ذاته وإنما الفساد باعتبار الشرط الزائد فيكون مفيداً للملك بعد القبض

وكذا صوم يوم النحر مشروع باعتبار كونه صوماً وغير مشروع باعتبار الوصف الذي هو الإعراض عن الضيافة فتعلق النهي في كل ذلك بالوصف لا بالأصل

ثم ههنا سؤال مقدر على أبي حنيفة رحمه الله وهو أن بيع الحر والمضامين والملاقيح ونكاح المحارم من الأفعال الشرعية مع أن ههنا لم يقع على القبح لغيره بل على القبح لعينه عندكم فأجاب عنه المصنف رحمه الله وقال:

والنهي عن بيع الحر والمضامين والملاقيح ونكاح المحارم مجاز عن النفي

فالحر عام من أن يكون حر الأصل أو حر العتاقة, والمضامين جمع مضمونة وهو ما في أصلاب الآباء, والملاقيح جمع ملقوحة وهو ما في أرحام الأمهات, والمحارم عام من أن يكون حرمة القرابة أو حرمة المصاهرة

وبالجملة فالنهي عن هؤلاء محمول على النفي بطريق المجاز فكان نسخاً لعدم محله

This is the same state of the rest of the *faasid* (corrupt) transactions, like selling with a condition which is not necessitated by the contract and in which there is benefit to one of the two parties (i.e. for the seller, such as the seller selling a slave to a person on condition that the slave still continues working for the seller for a month, or for the buyer, such as the buyer buying a cloth on condition that the seller sews it into a *qamees* for him) or the item (being sold, such as by placing a condition upon the sold item, for example: selling an item on condition that the buyer does not give it away, or sell it, etc.) which is from the people having a right (i.e. such as if what is being sold is a slave, which is a human being, thus having rights), or selling *khamr* (alcohol), etc.

All of that is legislated in terms of its being, but the *fasaad* (corruption) lies in the added stipulation, so after taking it, it results in ownership.

Similarly, fasting on the Day of Nahr is legislated in terms of its being *sawm* (fasting), but it is not legislated in terms of its description (*wasf*), which is that of turning away from being (on this day) among the guests of Allaah Ta`aalaa (i.e. by eating and drinking). Thus, the *nahi* in all of that is connected to the *wasf*, not to the *asl*.

Thereafter, there is a hidden question that is posed at Imaam Abu Haneefah رحمة الله عليه, which is that, selling a free person, or *madhaameen* (that which is in the loins of the male animals), and the *malaaqeeh* (that which is within the wombs of the animals), and the *nikaah* of *mahaarim* (relatives with whom marriage is *haraam*), all of this is from *al-Af`aal ash-Shar`iyyah*, despite the fact

that they do not fall into the category of *qabeeh li-ghayrihi*, but rather, they are *qabeeh li-`aynihi* according to you (the Ahnaaf). So, the author **رحمة الله عليه** responds to this by saying:

"The prohibition against the selling of a free person, and the *madhaameen*, and *malaaqeeh*, and *nikaah* of *mahaarim*, this (*nahi*) is a metaphor that refers to *nafi* (negation)."

So, the free person is general, in that he can either have been born free, or he can be a slave that was freed. *Madhaameen* is the plural of *madhmoonah*, and it refers to what is in the loins of the fathers (i.e. the male animals). *Malaaqeeh* is the plural of *malqoohah*, and it refers to that which is in the wombs of the mothers (i.e. the female animals). Mahaarim is general in that it can the *hurmat* (prohibitedness) can be on account of being a blood relative or on account of being an in-law (i.e. such as a mother-in-law, father-in-law, etc.)

In summary, the *nahi* for all of these things is carried upon the meaning of *nafi* (negation) by way of metaphor, so it is a *naskh* (abrogation, but what the author means here by it is "a negation", or, some say what he means is "a nullification".) because of the absence of its place.

أي فكذا هذا النهي كله نسخاً للمشروعية لعدم محل النهي إذ محل البيع هو المال وهؤلاء ليسوا بمال وحمل النكاح المحللات وهن محرمات بالنص

وفي إيراد لفظ النسخ بعد النفي تنبيه على ترادفهما ههنا ويمكن أن يكون نسخاً إصطلاحياً عند من يقول أن رفع الإباحة الأصلية ورفع ما في الجاهلية وفي الشرائع السابقة يسمى نسخاً

So, the nahi here refers to *naskh* (abrogation, or nullification) for those legislated things due to the absence of the place of the *nahi*, because the place of *bay`* is wealth, and these things are not wealth. The place of *nikaah* is the permissible women and these women are haraam, according to *nass*.

By the author using the term *naskh* after using the term *nafi*, it points out to their being near-synonyms (in the usage of the author). However, it is also possible that it can be the technical *naskh* (abrogation), because there are those who say that the raising of the original permissibity, and the raising of what had been done in *jaahiliyyah* and of what was in the previous *Sharaa'i`* (plural of Sharee`ah), that is termed *naskh* (abrogation).

لأن بيع الحر كان في شريعة يوسف وبيع المضامين والملاقيح كان في الجاهلية ونكاح بعض المحارم كان في الجاهلية وبعضها في الأديان السابقة

(وقال الشافعي رحمه الله في البابين ينصرف إلى القسم الأول)

شروع في بيان مذهب الشافعي رحمه الله, يعني, أن عنده النهي في كل من الأفعال الحسية والأفعال الشرعية ينصرف إلى القبح لعينه, فحرمة الزنا والخمر وحرمة صوم النحر عنده سواء قولاً (بكمال القبح) حال بمعنى الفاعل أي حال كونه قائلاً بكمال القبح وهو القبح لعينه أو مفعول له أي لأجل قوله بكمال القحب

Because the selling of a free person was in the Sharee`ah of Nabi Yusuf **عليه السلام**, and the *bay`* of *madhaameen* and *malaaqeeh* was in the time of *Jaahiliyyah*, and the *nikaah* of some *mahaarim* was in the time of *Jaahiliyyah* as well, and some was in the previous religions.

The author says:

"Imaam ash-Shaafi`ee **رحمة الله عليه** said, in both (cases) it goes to the first category."

He now begins a discussion on explaining the Madh-hab of Imaam ash-Shaafi`ee **رحمة الله عليه**, i.e. according to him, the *nahi* in both *al-Af`aal al-Hissiyyah* and in *al-Af`aal ash-Shar`iyyah* goes to *qabeeh li-`aynihi*, so the *hurmat* of *zinaa* and of *khamr*, and the *hurmat* of fasting on the Day of *Nahr*, according to him, are all equal, by his statement: "With the completion of evilness." This is a *haal* (condition), which gives the meaning of *faa`il* (the active participle), i.e. in the state of him being the one who says: "with the completion of evil." And that refers to *qabeeh li-`aynihi*. Or, the word used (*qowlan*) can be a *maf`ool lahu* (object), i.e. on account of him saying: "with the completion of evil."

(كما قلنا في الحسن في الأمر)

لأن من مذهبنا أن الأمر المطلق الخالي عن القرينة يقع على الحسن لعينه قولاً بكمال الحسن فلا يكون صوم يوم العيد سبباً للثواب عنده, ولا البيع الفاسد موجباً للملك بعد القبض

وإنما شبه النهي (بالأمر لأن النهي في اقتضاء القبح حقيقة كالأمر في اقتضاء الحسن) فينبغي أن يكونا على السواء

(ولأن المنهي عنه معصية فلا يكون مشروعاً لما بينهما من التضاد)

عطف على قوله قولاً بكمال القبح لا على قوله: لأن النهي في اقتضاء القبح حقيقة, كما يوهمه الظاهر

The author says:

"Like we (the Ahnaaf) say with regards to *hasan* (goodness) when it comes to *amr* (command)."

Because, our Madh-hab is that when an *amr* is unrestricted, free from any evidence to the contrary, then it falls into *hasan li-`aynihi*, (because of the saying) of the completion of *hasan* (goodness). Thus, fasting on the day of `Eid cannot be a cause for reward, according to him, nor can a corrupt transaction (*bay`-e-faasid*) cause a transfer of ownership after seizure (of the item). He resembled the *nahi* to the *amr*, because like how *nahi* necessitates that the prohibited thing contain evil, similarly *amr* necessitates that the commanded thing contain goodness." So it is necessary that they both be equal.

The author says:

"Because that which is prohibited from (*manhi `anhu*) is disobedience, therefore it cannot be legislated (*mashroo`*) because they are opposites."

This is coupled to his statement: "(due to his) saying 'the completion of evilness." It is not coupled to his saying: "Because the *nahi* necessitating evilness (in the prohibited thing) is a reality," unlike what the the literal gives the impression of.

وهو دليل ثان للشافعي رحمه الله باعتبار ترتب أحكامه وآثاره كما أن الأول دليل باعتبار تقدم مقتضاه وشرطه والفرق بين المسلكين بين وقد عرفت جوابهما فيما تقدم في ضمن تقريراتنا

(ولذا قال لا تثبت حرمة المصاهرة بالزنا)

هذا شروع في تفريعات الشافعي رحمه الله على مقدمة مطوية نشأت من قوله: فلا يكون مشروعاً, أي ولأن المنهي عنه سواء كان حسياً أو شرعياً لا يكون مشروعاً بنفسه ولا سبباً لمشروع آخر قال الشافعي رحمه الله لا تثبت حرمة المصاهرة بالزنا, لأن الزنا حرام ومعصية فلا يكون سبباً لنعمة هي حرمة المصاهرة لأنها تلحق الأجنبية بالأمهات وقد من الله تعالى بها علينا حيث قال:

وَهُوَ الَّذِيْ خَلَقَ مِنَ الْمَاءِ بَشَراً فَجَعَلَهُ نَسَباً وَّصِهْراً

فلا تثبت حرمة المصاهرة إلا بالنكاح, وهي أربع حرمات: حرمة أب الواطي وابنه على الموطوءة وحرمة أم الموطوءة وبنتها على الواطي, فهذه الأربع عنده لا تتعلق إلا بالوطي الحلال

وعندنا كما تثبت بالنكاح تثبت بالزنا, ودواعيه من القبلة واللمس والنظر إلى الفرج الداخل بشهوة وذلك لأن دواعي الزنا مفضية إلى الزنا والزنا مفض إلى الولد

This is a second proof of Imaam ash-Shaafi`ee **رحمة الله عليه** in terms of its different ranks in rulings and effects, just as the first is a proof in terms of the precedence of what is necessitated by it and its stipulation, and the difference between the two paths is clear, and I explained the answer to both in what was mentioned earlier.

The author says:

"For this reason, he said that *hurmat-ul-musaaharah* is not established through *zinaa*."

This is a commencement in a discussion on the views of Imaam ash-Shaafi`ee **رحمة الله عليه** upon a folded up introduction which stemmed from his saying: "So it cannot be *mashroo`* (legislated)." i.e. because the prohibited thing (*manhi `anhu*) is the same whether it is *hissi* (tangible, i.e. its evilness is known even before being mentioned by the Sharee`ah) or *Shar`i* (its *hurmat* is derived from the Sharee`ah), then in and of itself it cannot be *mashroo`* (legislated), nor can it be a *sabab* (cause) for a different legislated thing.

Imaam ash-Shaafi`ee **رحمة الله عليه** said: "*Hurmat-ul-Musaaharah* is not established through *zinaa*, becausee *zinaa* is *haraam* and disobedience, so it cannot be a *sabab* (cause) for receiving a *ni`mah* which is *hurmat-ul-musaaharah*, because it puts a strange woman among the mothers (i.e. it makes the

mother-in-law *haraam*, and some of the laws of *hijaab* to be dropped), and Allaah Ta`aalaa has favoured us with it whence He said:

{"*And He it is Who created man from water and established for him kindred by blood and kindred from marriage*."}

Thus, *hurmat-ul-musaaharah* is not established but through *nikaah*, and there are four types of *hurmat*:

1. The *hurmat* of the father of the husband upon the wife.
2. The *hurmat* of the son of the husband upon the wife.
3. The *hurmat* of the mother of the wife upon the husband.
4. The *hurmat* of the daughter of the wife upon the husband.

So according to him, these four *hurmats* are not established except through permissible intercourse (i.e. nikaah).

According to us (the Ahnaaf), it is established through *zinaa* just as it is established through *nikaah*, and it is also established through those things which lead to *zinaa* such as kissing, and touching and looking at the hidden private parts with *shahwah* (desire), and that is because those things lead to *zinaa* and *zinaa* leads to a child.

والولد هو الأصل في استحقاق الحرمات أي يحرم على الولد أولاً أب الواطي وابنه إذا كانت أنثى وأم الموطوءة وبنتها إذا كان ذكراً ثم تتعدى من الولد إلى طرفيه فتحرم قبيلة المرأة على الزوج وقبيلة الزوج على المرأة لأن الولد أنشأ جزئية واتحاداً بينهما

The child is the original factor that makes the *hurmat* become deserving, i.e. it first becomes *haraam* upon the child, the father of the husband, and the son if the child is female, and the mother of the wife and her daughter if the child is male. Thereafter, the hurmat extends from the child to his two sides (i.e. his parents), so the mother's family becomes *haraam* upon the husband and the husband's family becomes *haraam* upon the wife, because the child has come about as a part and a unity between them.

ولهذا يضاف الولد الواحد إلى الشخصين جميعاً فصار كأن الموطوءة جزء من الواطي والواطي جزو منها فتكون قبيلته قبيلتها وقبيلتها قبيلته فعلى هذا كان ينبغي أن لا يجوز وطي الموطوءة مرة أخرى ولكن إنما جاز ذلك دفعاً للحرج

For this reason, the one child is attached to two individuals, so it becomes as though the wife is a part of the husband and the husband is a part of the wife, so his family becomes her family and her family becomes his family, and for this reason, it was appropriate that it is not permissible (for the husband) to have relations with the wife a second time, but this was permitted to ward off difficulty.

وكذا تتعدى هذه من الزنا إلى أسبابه فالزنا وأسبابه إنما يفيد حرمة المصاهرة بواسطة الولد لا من حيث أنه زنا كما أن التراب إنما يطهر الأحداث لأجل قيامه مقام الماء لا من حيث نفسه

Similarly, this (*hurmat*) extends from *zinaa* to its causes (*asbaab*), because *zinaa* and its *asbaab* (causes, or things which lead to it, such as looking with *shahwah*, and touching, kissing, etc.) lead to *hurmat-ul-musaaharah* via the medium of the child, not from the fact that it is *zinaa*, just as how sand purifies *ahdaath* (impurities) because of it taking the place of water (in the absence of water), not from its own part.

(ولا يفيد الغصب الملك)

عطف على قوله: لا تثبت, وتفريع ثان للشافعي رحمه الله وذلك لأن الغصب حرام ومعصية فلا يكون سبباً لأمر مشروع هو الملك إذا هلك المغصوب وقضي عليه بالضمان

وعندنا يملك الغاصب المغصوب بعد المضان, فيملك اكسابه الباقية في يده وينفذ بيعه الماضي لأنه لو لم يملك الغاصب المغصوب بل بقي في ملك المالك لاجتمع البدلان في ملكه وهو الأصل مع الضمان وذلك لا يجوز. فلما ملك المالك الضمان يجب أن يملك الغاصب المغصوب فالضمان عنده بقابلة اليد الفائتة عن الملك, وعندنا بمقالبة الملك الفائت إلا في المدبر فإنه إذا غصب رجل مدبر أحد وهلك في يده يضمنه ولا يملكه جبراً ليده الفائتة

The author says:

"And *ghasb* (looting or forceful seizure) does not result in ownership."

This is coupled to his statement: "it is not established", and it is a second branching off of Imaam ash-Shaafi`ee **رحمة الله عليه**, and that is because *ghasb* is *haraam* and disobedience (to Allaah Ta`aalaa), so it cannot be a *sabab* (cause) for something that is *mashroo`* (legislated), which is ownership (i.e. the *ghaasib*

or one who looted / seized forcefully coming into possession of the item) if the looted item perishes and he recompenses for it.

According to us (the Ahnaaf), the *ghaasib* (looter or one who seizes something forcefully) owns the looted item after recompensing (for it), and he owns whatever accrues from it and remains in his hand, and his previous sale is discharged (i.e. if the *ghaasib* sells the looted item and thereafter recompenses the original owner for it, the sale is complete), because if the *ghaasib* did not own the looted item, but rather it had remained in the ownership of the original owner, then two substitutes would join in his possession, which is the *asl* (the original looted item) plus the recompense (given to him by the *ghaasib*), and that is not permissible.

If the original owner comes into possession of the compensation, then it is necessary that similarly the *ghaasib* comes into possession of the looted item. The compensation, according to him, is equal to the lost possession of the item (i.e. it is as though the *ghaasib* has caused the original owner's hand to lose possession of that item, so the compensation is to make up for that lost possession).

Thus, according to Imaam ash-Shaafi`ee رحمة الله عليه, the purpose of the compensation is to make up for that lost possession, but it is not equal to the actual lootem item itself, and therefore the *ghaasib* does not own that looted item even after compensating the original owner for it.

According to us, the compensation is equal to the missing possession (i.e. and thus the *ghaasib* comes into possession of the looted item after recompensing the original owner for it), except in the case of a *mudabbar* (a slave who is promised manumission, such as by the master saying to him: "When I die, you are free.") If a person forcefully seizes a *mudabbar* belonging to someone else, and (the *mudabbar*) perishes while in his control, then he recompenses (the owner for it) and he does not come into of him, and (the recompensing) is to make up for having taken him (the *mudabbar*) out of the hand (of the owner).

(ولا يكون سفر المعصية سبباً للرخصة)

تفريع ثالث للشافعي رحمه الله وذلك لأن سفر المعصية وهو سفر الآبق وقاطع الطريق والباغي معصية وحرام فلا يكون سبباً لمشروع وهو الرخصة في إفطار الصوم وقصر الصلاة

وعندنا تعم الرخصة للمطيع والعاصي جميعاً لأن السفر ليس قبيحاً في نفسه بل القبيح هو المعصية مجاور له منفك عنه, فيصلح سبباً للرخصة ولا يملك (الكافر مال المسلم بالإستيلاء) تفريع رابع للشافعي رحمه الله وذلك لأن إستيلاء الكافر على مال المسلم وإحرازه بدار الحرب أمر حرام ومحظور فلا يصلح أن يكون سبباً لملكه

The author says:

"And a journey of evil can never be a cause for (receiving) the *rukhsah* (concession)."

This is a third branching off of Imaam ash-Shaafi`ee **رحمة الله عليه**, because the journey of evil, which is, for example, a run-away slave taking a journey, and the journey undertaken by a highway robber, and by a *baaghi* (rebel), etc., is disobedience and *haraam*, and therefore it cannot act as a *sabab* (cause) for them receiving that which is *mashroo`* (legislated), which is the *rukhsah* (concession) of not fasting (if it is during Ramadhaan) and of making *qasr* Salaah.

According to us (the Ahnaaf), the *rukhsah* (concession) is *`aam* (general) for both the obedient one and the disobedient one, because a journey is not *qabeeh fee nafsihi* (evil in itself), but rather, the evilness lies in the disobedience that is accompanying it and which is capable of separate from it, and thus it is valid to be a *sabab* (cause) for receiving the *rukhsah* (concession).

The author says:

"And a Kaafir cannot own the wealth of a Muslim by way of seizing it."

This is a fourth branching off of Imaam ash-Shaafi`ee **رحمة الله عليه**. The reason (for him saying this) is that for a Kaafir to seize and come into possession of the wealth of a Muslim in *Daar-ul-Harb* (a land at war with Islaam) is a matter that is *haraam* and prohibited, thus it is not capable of being a *sabab* (cause) for the transfer of ownership (into the hands of the Kaafir).

وعندنا يكون ذلك سبباً لملكه لأن الحفظ إنما يكون بالملك أو باليد فإذا أخذوه وأدخلوه في دارهم فات منا اليد والملك فكان استيلاؤهم على محل غير معصوم بقاءاً وإن كان معصوماً إبتداءاً فيملكونه وقد ثبت ذلك من إشارة قوله تعالى:

لِلْفُقَرَاءِ الْمُهَاجِرِيْنَ الَّذِيْنَ أُخْرِجُوْا مِنْ دِيَارِهِمْ وَأَمْوَالِهِمْ

لأنهم كانوا مياسير بمكة وإنما سموا فقراء لاستيلاء الكفار على مالهم

According to us (the Ahnaaf), it acts as a *sabab* (cause) for the transfer of owndership, because protection (of the wealth) takes place with ownership or with the hand (i.e. with control), so when they take (the wealth) and tranport it to their land, then the control as well as the ownership is lost from us, so their seizing and coming into possession of it is over something (i.e. the wealth) that is unprotected even though it had been protected initially, so they come into possession of it. That is established from what is pointed out in the Aayah:

{"*(And there is also a share in the spoils of war) for the poor Muhaajireen who were driven out from their homes and their wealth...*"}

Because (some of the Muhaajireen) had been wealthy in Makkah, but now (when they came to Madeenah) they were called *fuqaraa* (poor) because of the Kuffaar having seized and taken control of their wealth (which was left behind in Makkah).

End of Volume I.

تمّت بإذن الله تبارك وتعالى والله وليّ التوفيق